



State Senator Sheila Harsdorf

January 18, 2007

To: Members, Assembly Committee on Elections and Constitutional Law

Fr: Sheila Harsdorf, State Senator

Re: AJR 1, ending the use of the "Frankenstein Veto"

I am testifying in favor of passage of AJR 1 on second consideration, to prohibit partial vetoes from creating new sentences by combining parts of two or more sentences. In 2006, the Legislature approved on first consideration this resolution on a 23-10 vote in the State Senate and a 68-25 vote in the State Assembly. Today, AJR 1 has 44 Assembly co-sponsors, and a majority of State Senators, 17, as co-sponsors.

Ending the abuse of the partial veto will not only help restore public confidence in the lawmaking process, but it will also serve as a critical step to budget reform. As you may be aware, in the 2005-07 budget, the Governor stitched together 20 random words within 752 words of the state budget to create an altogether new sentence that was never approved by the State Legislature. The end result of this abuse was appropriating \$427 million never authorized by the Legislature. I coined this abuse the "Frankenstein Veto."

A student of democratic government learns early that the executive branch cannot single-handedly appropriate funds. Yet, the Frankenstein Veto makes a mockery of this basic principle. It is preposterous the fashion in which the partial veto was exercised in 2005 to create laws and expend taxpayer money the legislature never intended. I have attached a copy for review.

In 1990, Wisconsin citizens voted to amend the constitution to prohibit a governor from vetoing letters to create new words. This resolution proposes amending the constitution to prohibit a governor from creating a new sentence by combining two or more sentences of a bill. While all but 7 states provide executive "line-item" veto authority, Wisconsin is the only state with partial veto authority, which is more expansive than "item" veto authority. Wisconsin's governor would continue to have the broadest veto authority of any executive in the U.S. even with the enactment of this amendment.

I urge your support of this resolution as a means to reform the budget process and restore the balance of power.

**Vetoed
In Part**

shall construct an underpass for the Sugar River State Trail at the intersection of the trail with STH 69 in the village of New Glarus in Green County when the Department of Transportation rehabilitates that section of STH 69.

(b) If the village of new Glarus agrees with the department of transportation that a lower cost improvement project would provide substantially similar safety enhancements as the project described in par. (a), the department of transportation may construct the lower cost improvement project instead of constructing the project described in par. (a).

**Vetoed
In Part**

(3f) SAFETY IMPROVEMENT STUDY. In the 2005-07 biennium, the department of transportation shall conduct an engineering study of the segment of STH 58 in Sauk County between the Sauk County/Richland County line and CTH G to determine ways to improve public safety on that segment of STH 58. The department of transportation shall make any changes recommended in the study to improve public safety in the segment of STH 58 in Sauk County between the Sauk County/Richland County line and CTH G.

**Vetoed
In Part**

(4f) AGENCY REQUEST RELATING TO MARQUETTE INTERCHANGE RECONSTRUCTION PROJECT BONDING. Notwithstanding section 16.42 (1) of the statutes, in submitting information under section 16.42 of the statutes for purposes of the 2007-09 biennial budget act,

**Vetoed
In Part**

the department of transportation shall include recommended reductions to the appropriation under section 20.395 (3) (cr) of the statutes for each fiscal year of the 2007-09 fiscal biennium reflecting the transfer

**Vetoed
In Part**

from this appropriation account to the appropriation account under section 20.395 (6) (au) of the statutes, as created by this act, of amounts for anticipated debt service payments, in each fiscal year of the 2007-09 fiscal biennium; on general obligation bonds issued under section 20.866 (2) (uup) of the statutes, as created by this act.

**Vetoed
In Part**

(4w) PASSENGER RAIL SERVICE

(a) The department of transportation may submit, in each fiscal year of the 2005-07 biennium, a request to the joint committee on finance to supplement the appropriation under section 20.395 (2) (cr) of the statutes by up to \$572,700 in fiscal year 2005-06 and up to \$629,900 in fiscal year 2006-07 from the appropriation account under section 20.865 (4) (u) of the statutes for passenger rail service. Any request submitted under this paragraph shall be submitted by the due date for agency requests for the joint committee on finance's second quarterly meeting under section 13.10 of the statutes of the year in which the request is made. The committee may supplement the appropriation under section 20.395 (2) (cr) of the statutes by up to \$572,700 in fiscal year 2005-06 and up to \$629,900 in fiscal year 2006-07 from the appropriation account under section 20.865 (4) (u) of the statutes for passenger rail service and,

notwithstanding section 13.101 (3) of the statutes, the committee is not required to find that an emergency exists prior to making the supplementation.

(b) If the joint committee on finance determines that the moneys provided under section 20.395 (2) (cr) and (ex) of the statutes are sufficient for passenger rail service in any fiscal year of the 2005-07 biennium, the committee may:

1. Supplement, by up to \$572,700 in fiscal year 2005-06 and up to \$629,900 in fiscal year 2006-07 from the appropriation account under section 20.865 (4) (u) of the statutes, other department of transportation appropriations. Notwithstanding section 13.101 (3) of the statutes, the committee is not required to find that an emergency exists prior to making the supplementation.

2. Transfer moneys from the appropriation account under section 20.395 (2) (cx) of the statutes that are not needed for passenger rail services to other department of transportation appropriations. Notwithstanding section 13.101 (4) of the statutes, the committee is not required to find, prior to making the transfer, that unnecessary duplication of functions can be eliminated, more efficient and effective methods for performing programs will result, or legislative intent will be more effectively carried out because of such transfer.

(c) If the committee approves a supplement under paragraph (a), the committee may supplement, by the amount by which the supplement it approves under paragraph (a) is less than \$572,700 in fiscal year 2005-06 or \$629,900 in fiscal year 2006-07, other department of transportation appropriations. Notwithstanding section 13.101 (3) of the statutes, the committee is not required to find that an emergency exists prior to making the supplementation.

(d) If, in considering a request made under paragraph (a), the joint committee on finance determines that \$572,700 in fiscal year 2005-06 or \$629,900 in fiscal year 2006-07 is not sufficient to fund passenger rail service, the committee may supplement the appropriation account under section 20.395 (2) (cr) of the statutes, from the appropriation under section 20.865 (4) (u) of the statutes, by an amount that would not cause the transportation fund to have a negative balance. Notwithstanding section 13.101 (3) of the statutes, the committee is not required to find that an emergency exists prior to making the supplementation.

(5f) VILLAGE OF OREGON STREETSCAPING PROJECT. In the 2005-07 fiscal biennium, from the appropriation under section 20.395 (2) (nx) of the statutes, the department of transportation shall award a grant under section 85.026 (2) of the statutes of \$484,000 to the village of Oregon in Dane County for a streetscaping project on Main Street and Janesville Street in the village of Oregon if the village of Oregon contributes funds for the project that at least equal 20 percent of the costs of the project.

**Vetoed
In Part**

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In Part**

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In Part

(5g) ~~CHIPPewa COUNTY CROSSING AND RAMP. In the 2005-07 fiscal biennium, from the appropriation under section 20.395 (2) (nx) of the statutes, the department of transportation shall award a grant under section 85.026 (2) of the statutes of \$80,000 to Chippewa County for the construction of a pedestrian railroad crossing and handicap-accessible ramp related to the Ray's Beach revitalization project on Lake Wissota in Chippewa County if Chippewa County contributes funds for the project that at least equal 20 percent of the costs of the project.~~

(5h) ~~VILLAGE OF WESTON BICYCLE-PEDESTRIAN BRIDGE. In the 2005-07 fiscal biennium, from the appropriation under section 20.395 (2) (nx) of the statutes, the department of transportation shall award a grant under section 85.026 (2) of the statutes of \$576,000 to the village of Weston in Marathon County for the construction of a bicycle-pedestrian bridge over STH 29 adjacent to Birch Street and the Weston Regional Medical Center in the village of Weston if the village of Weston contributes funds for the project that at least equal 20 percent of the costs of the project.~~

Vetoed
In Part

(6n) ~~EISNER AVENUE PROJECT IN SHEBOYGAN COUNTY. Notwithstanding limitations on the amount and use of aids provided under section 86.31 of the statutes, as affected by this act, or on eligibility requirements for receiving aids under section 86.31 of the statutes, as affected by this act, the department of transportation shall award a grant of \$500,000 in the 2005-07 fiscal biennium to the city of Sheboygan in Sheboygan County for the rehabilitation of Eisner Avenue in Sheboygan County if the city of Sheboygan and the town of Sheboygan in Sheboygan County reach an agreement on the amount of funds to be contributed by each toward the total local share of the project costs. Payment of the grant under this subsection shall be made from the appropriation under section 20.395 (2) (fr) of the statutes, as created by this act, equally from funds allocated under section 86.31 (3m) of the statutes, as affected by this act, and from funds allocated under section 86.31 (3r) of the statutes, as affected by this act, and is in addition to the city of Sheboygan's entitlement, as defined in section 86.31 (1) (ar) of the statutes, to aids under section 86.31 of the statutes, as affected by this act.~~

Vetoed
In Part

(7f) ~~REQUEST FOR ENGINEERING POSITIONS TRANSFER FOR 2006-07. The department of transportation may submit a request to the joint committee on finance under section 13.10 of the statutes to reallocate not more than 6.0 engineering positions in fiscal year 2006-07 to other position types that support the department of transportation's highway delivery functions.~~

SECTION 9149. Nonstatutory provisions; treasurer.

SECTION 9150. Nonstatutory provisions; University of Wisconsin Hospitals and Clinics Authority.

SECTION 9151. Nonstatutory provisions; University of Wisconsin Hospitals and Clinics Board.

SECTION 9152. Nonstatutory provisions; University of Wisconsin System.

(1) **OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION TESTING.**

(a) *Positions and employees.*

1. The authorized FTE positions for the department of health and family services, funded from the appropriations under section 20.435 (1) (a), (gm), and (m) of the statutes, as affected by this act, are decreased by 9.5 FTE positions, for the purpose of providing occupational safety and health administration testing.

3. The authorized FTE positions for the state laboratory of hygiene, funded from the appropriation under section 20.285 (1) (fd) of the statutes, are increased by 0.95 FTE position, for the purpose of providing occupational safety and health administration testing.

4. The authorized FTE positions for the state laboratory of hygiene, funded from the appropriation under section 20.285 (1) (i) of the statutes, as affected by this act, are increased by 0.5 FTE position, for the purpose of providing occupational safety and health administration testing.

5. The authorized FTE positions for the state laboratory of hygiene, funded from the appropriation under section 20.285 (1) (m) of the statutes, are increased by 11.55 FTE positions, for the purpose of providing occupational safety and health administration testing.

6. All incumbent employees in the department of health and family services who perform occupational safety and health administration testing are transferred on the effective date of this subdivision to the state laboratory of hygiene. Employees transferred under this subdivision have all the rights and the same status under subchapter V of chapter 111 and chapter 230 of the statutes in the employment commission that they enjoyed before the transfer. Notwithstanding section 230.28 (4) of the statutes, no employee so transferred who has attained permanent status in class must serve a probationary period.

(b) *Tangible personal property.* On the effective date of this paragraph, all tangible personal property, including records, that relates to occupational safety and health administration testing of the department of health and family services is transferred to the state laboratory of hygiene.

(c) *Contracts.* All contracts entered into by the department of health and family services that relate to occupational safety and health administration testing and that are in effect on the effective date of this paragraph remain in effect and are transferred to the state laboratory of hygiene. The state laboratory of hygiene shall carry out any obligations under such a contract until the state

Remarks for Assembly Committee on Elections & Constitutional Law

Regarding AJR 1 – Partial Vetoes

By Representative Donald Friske

January 18, 2006

Thank you Chairwoman Albers and Committee members. I appreciate your hearing today and scheduling this important legislation for consideration.

“Only the limits of one’s imagination fix the outer limits of the exercise of the partial veto power by incision or deletion by a creative person. At some point this creative negative constitutes the enacting of legislation by one person, and at precisely that point the governor invades the exclusive power of the legislature to make laws.” – Justice Connor T Hansen, Wisconsin State Supreme Court, Kleczka v. Conta (1978)

In 1911, Wisconsin’s legislature began to pass a single omnibus budget bill. The effect of this method was to undermine the veto power and reduce control of the executive over the very agencies he was in charge of. Thus, after some years of wrangling, in 1927, 1929 and 1930, the legislature and the people of Wisconsin agreed to amend the constitution creating a “partial veto.”

Current law allows a governor to reduce both numbers and words out of an appropriation bill. The language legislators used in the creation of this power back in 1931 became a “partial veto” rather than an “item veto.” The distinction may not seem great to the general public, however lawyers in both the executive branch and judicial branch have used the distinction to chip away at the power of the legislative branch and to enhance the powers of the executive branch without the approval of the people of the State of Wisconsin.

In 2002, I Co-Chaired with Senator Jauch a Study Committee on Improving Wisconsin’s Fiscal Management. Representative Jeff Stone, a cosponsor of this legislation, was a valued member of that panel as well. The Joint Committee on Legislative Council decided to accept all of the Study Committee’s recommended legislation except for the bill limiting a governor’s partial veto power.

The most recent example of this was done in 2005 Act 25. 752 words were vetoed to create a new 20 word sentence deleting \$427 million out of the transportation fund and allowing the Secretary of Administration to spend \$330 million more than the legislature authorized on education.

This unprecedented veto actually increased state spending, the complete opposite of the partial veto power originally intended for the executive branch. To allow governors power to write laws is contrary to the legislative intent of the 1929 legislature, as expressed by partial veto proponent Senator Thomas Duncan, ***“The legislature holds the purse strings but cannot play politics and the governor is given a genuine veto power but he cannot dictate appropriations.”***

The last statement made by the people of Wisconsin on the partial veto was in 1990, when the Constitution was amended to curb the ability of Governor Thompson to use a “Vanna White veto” to create new words. The logical extension of that feeling of the legislature and the people of Wisconsin is to not allow the creation of new sentences and bill sections either. Therefore, on behalf of my Legislative Council Study Committee and the people of Wisconsin, I have proposed this resolution.

The time has come for the legislature to use its check to restore balance to State government powers.

AJR 1, if approved by the voters, will eliminate the ability of the executive to create wholly unintended legislation. The bills do not limit the ability of the executive to veto a particular appropriation downward.

I respectfully ask the committee pass this legislation and reinforce the original intent of 1929 legislature. Thank you again for hearing these bills today. I will be happy to take any question you may have.

THE UNIVERSITY OF CHICAGO
DEPARTMENT OF CHEMISTRY

RECEIVED
JAN 10 1964

TO THE DIRECTOR
FROM THE DEPARTMENT OF CHEMISTRY

RE: [illegible]

[illegible]

[illegible]

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[illegible]

[illegible]

[illegible]

Representative Don Friske's History of the Partial Veto

- **1911** – Legislature begins playing political games with **Governor McGovern**, by sending an omnibus appropriation bill with no choice but to sign or veto all provisions contained in it.
- **1930** – Legislature and the people of Wisconsin give the governor balance with the partial veto, the strongest veto in the USA
 - Partial veto proponent **Senator Thomas Duncan** said, “To allow the governor with power to write laws is contrary to the legislative intent of the 1929 legislature,” and “The legislature holds the purse strings but cannot play politics and the governor is given a genuine veto power but he cannot dictate appropriations.”
- **1973** – **Governor Lucey** uses the digit veto for the first time to reduce a dollar amount
- **1975** – **Governor Lucey** pushed the envelope further by deleting a single word (“not”) which reduced funding from “not less than 50%” to “less than 50%”, for the first time completely altering the intent of the legislature
- **1976** – The Wisconsin Supreme Court rules, for the first time the governor can create an affirmative change rather than a negative change
- **1977** – **Governor Marty Schreiber** used the partial veto, for the first time in Wisconsin history, to enact a law rejected by the legislature
- **1978** – The legislature sued and the Supreme Court ruled **Governor Schreiber's** action was legal
 - **Justice Connor T Hansen** dissents, stating “Only the limits of one’s imagination fix the outer limits of the exercise of the partial veto power by incision or deletion by a creative person. At some point this creative negative constitutes the enacting of legislation by one person, and at precisely that point the governor invades the exclusive power of the legislature to make laws.”
- **1983** – **Tony Earl** used the “Vanna White” veto for the first time
- **1985 – 2000** – **Governor Thompson** used the digit veto, the editing veto, the “Vanna White” veto and created the reduction veto, writing in any lower dollar amount in the original’s place
- **1988** – The Wisconsin Supreme Court reaffirms the governor is allowed to change the nature of legislation approved by the legislature in favor of legislation rejected by the legislature as long as the new law is “complete, entire and workable.”
 - **Justices Bablitch, Abrahamson and Steinmetz** dissented, “By holding that appropriation legislation is in essence a potpourri of individual letters, an alphabet soup if you will, the majority has stripped the legislature of any opportunity to circumscribe the parameters of the effects of a gubernatorial veto. The governor is now limited only by the letters in front of him and the extensiveness of his imagination, subject only to the [Supreme Court] majority’s germaneness requirement.”
- **1990** – Wisconsin voters approve eliminating the “Vanna White” veto
- **1992** – Attorney General **Jim Doyle** states, “No one should be able to create new laws through the use of a veto. As we all learned in our studies of good government, laws should be written by the legislature and either approved or rejected by the governor.”
- **2002** – Gubernatorial candidate **Jim Doyle** states, “I don’t think you should be able to go in and take a word out there and a word out here and create a whole new sentence.”
- **2002** – Bipartisan legislative council study committee proposes legislation to limit the partial veto
- **2005** – Governor **Jim Doyle** went in and took a word out here and a word out there, creating a whole new sentence ... increasing spending through the use of the partial veto for the first time in Wisconsin’s history
- **2006 & 2007** – The Wisconsin State Legislature is using its constitutionally provided check to restore balance after nearly a century of previous legislatures, supreme courts, governors and finally our current governor to have wreaked havoc and uncertainty into the budget process.

Conclusion: **The abuse of the veto was performed by many governors of each party and enabled by the Supreme Court. Failing to amend the constitution will allow that abuse to continue for years to come.**

The legislature writes the laws. The Governor signs, vetoes and executes the laws. This amendment restores truthfulness to every Wisconsin fourth grader’s social studies textbook.

C

State ex rel. Kleczka v. Conta, Wis. 1978.

Supreme Court of Wisconsin.

STATE ex rel. Gerald D. KLECZKA and John C. Shabaz, on Behalf of themselves and all persons similarly situated, Petitioners,

v.

Dennis J. CONTA, Secretary, Department of Revenue of the State of Wisconsin, Election Board of the State of Wisconsin, Douglas LaFollette, Secretary of State of the State of Wisconsin, Martin J. Schreiber, Acting Governor of the State of Wisconsin, and Bronson La Follette, Attorney General of the State of Wisconsin, Respondents.

No. 77-463-OA.

Argued Jan. 23, 1978.

Decided April 5, 1978.

An original action was instituted by members of the Wisconsin Legislature for the purpose of securing a declaration that a partial veto of a bill enacted by the Legislature was legally defective. The Supreme Court, Heffernan, J., held, inter alia, that the partial veto was proper even though it had the effect of changing the bill's policy.

Relief denied.

Connor T. Hansen, J., concurred in part and dissented in part and filed opinion.

West Headnotes

[1] Statutes 361**361 Statutes****361I** Enactment, Requisites, and Validity in General**361k25** Approval or Veto by Executive Authority**361k33** k. Disapproval of Portion of Bill.**Most Cited Cases**

For purposes of judging whether legislative bill could be subjected to partial veto, bill was appropriation bill where it set apart portion of public funds for financing of election campaigns, thus authorizing expenditure of public monies. Laws 1977, c. 107, §§ 1

et seq., 53; W.S.A.Const. art. 5, § 10; art. 8, § 8; W.S.A. 20.510, 71.095.

[2] Statutes 361**361 Statutes****361I** Enactment, Requisites, and Validity in General**361k25** Approval or Veto by Executive Authority**361k33** k. Disapproval of Portion of Bill.**Most Cited Cases**

Where Governor exercised his power of partial veto of legislative bill, he was not required physically to return approved portions of bill to Legislature, and constitutionally required return of vetoed portions was made when Governor submitted his objections to bill and his veto message in timely fashion to originating house of Legislature. W.S.A.Const. art. 4, § 17(2); art. 7, § 21; W.S.A. 14.08, 71.095, 985.04(2); Laws 1977, c. 107, § 53.

[3] Statutes 361**361 Statutes****361I** Enactment, Requisites, and Validity in General**361k25** Approval or Veto by Executive Authority**361k33** k. Disapproval of Portion of Bill.**Most Cited Cases**

For purposes of determining whether partial veto is valid, test of severability is simply that what remains be a complete and workable law; power of Governor to disassemble law is coextensive with power of Legislature to assemble its provisions initially.

[4] Statutes 361**361 Statutes****361I** Enactment, Requisites, and Validity in General**361k25** Approval or Veto by Executive Authority**361k33** k. Disapproval of Portion of Bill.**Most Cited Cases**

Where what remained after Governor exercised par-

tial veto over legislation involving designation of funds for deposit into Wisconsin election campaign fund was complete, entire, and workable law, such legislation was severable and partial veto was valid even though it had effect of changing policy of legislation from that of encouraging add-ons to taxpayers' personal liability to that of imposing charge on general fund. Laws 1977, c. 107, §§ 1 et seq., 53; W.S.A.Const. art. 4, § 17(2, 3); art. 5, § 10; art. 7, § 21; W.S.A. 11.50, 14.08, 20.510, 71.095, 985.04(2), 990.001(11).

[5] Statutes 361 ⚡ 33

361 Statutes

361I Enactment, Requisites, and Validity in General

361k25 Approval or Veto by Executive Authority

361k33 k. Disapproval of Portion of Bill.

Most Cited Cases

Under Wisconsin Constitution, Governor may exercise his partial veto power by removing provisos and conditions to appropriation so long as net result of partial veto is complete, entire, and workable bill which Legislature itself could have passed in first instance. W.S.A.Const. art. 5, § 10; Laws 1977, c. 107, § 53; W.S.A. 71.095.

****539 *682** Trayton L. Lathrop (argued), Donald L. Heaney and Isaksen, Lathrop, Heaney & Long, Madison, on brief, for petitioners.

Irvin B. Charne (argued), Howard B. Tolkan, Arthur J. Harrington, and Charne, Glassner, Tehan, Clancy & Taitelman, S. C., Milwaukee, on brief, for respondents Dennis J. Conta, Douglas LaFollette, and Martin J. Schreiber.

****540** Bronson C. La Follette, Atty. Gen., and John E. Armstrong, Asst. Atty. Gen., on Attorney General's brief in response to order to show cause.

HEFFERNAN, Justice.

The petitioners in this original action are Gerald D. Kleczka, a member of the Wisconsin Senate, and John C. Shabaz, a member of the Assembly. On December 2, 1977, they filed a petition for leave to ***683** commence an original action in this court for the purpose of securing this court's declaration in respect to the validity of a purported partial veto of an

enrolled bill which originated as Assembly Bill 664. The petitioners contend that the partial veto was legally defective and, accordingly, the entire bill as enacted by the legislature was required to be published as law.

The principal respondent named in the petition is Martin J. Schreiber, Acting Governor (hereafter Governor) of the State of Wisconsin. Pursuant to an order to show cause, the petition for leave to commence an original action was heard before the court on December 23, 1977. Following the filing of a stipulation of facts by the petitioners and by the respondents, this court, on January 5, 1978, granted leave to the petitioners to commence an original action. The original action was argued before the court on January 23, 1978, and briefs were filed on the merits.

As is evidenced by our order of January 5, 1978, we have concluded that the matter is an appropriate one for declaratory judgment. There is clearly a justiciable controversy between persons whose interests are adverse and persons who have a legally protectible interest. The issue is ripe for judicial determination.

The legislation which was vetoed in part deals with financing of election campaigns by a legislatively created campaign fund. It is legislation the validity of which is of concern to the state as a whole, and the issue posed here involves the constitutional prerogatives of both the Governor and the Legislature.

The material facts are agreed to by the parties, and no fact-finding procedure is necessary. The action is appropriate for disposition as a matter of law in an original action.

Assembly Bill 664, as subsequently amended, was concurred in by the Senate on September 28, 1977. The enrolled bill was presented to the Governor on October 11, ***684** 1977. On that same day the Governor purported to exercise the partial-veto authority conferred upon him by art. V, sec. 10, of the Wisconsin Constitution. A message and a letter from the Governor was sent to the Assembly Chief Clerk on that same date. He stated that he had exercised his partial veto "to restore the check-off provision that

existed in the original bill" (sec. 51) and exercised his partial veto "in Section 53 of the bill because the September 30, 1977, effective date is unnecessary to implement the law for the 1978 elections."

After the veto no part of the enrolled bill was physically delivered to the Assembly.

In the Governor's message to the Assembly, he stated that the bill as partially vetoed and partially approved was deposited in the Secretary of State's office.

The Assembly Journal dated October 12, 1977, referred to the Governor's message and letter. The receipt of the signed, enrolled bill showing the partial vetoes was formally acknowledged by the Secretary of State on October 17, 1977.

Sometime between October 17, the date of the Secretary of State's formal acknowledgment of the receipt of the bill from the Governor, and October 20, the date the bill was published, the signed, enrolled bill was exhibited to the Legislative Reference Bureau, and copies of that bill were printed by the Bureau showing the partial vetoes.

On October 20, conformed copies of the bill as partially approved and partially vetoed were submitted to the Chief Clerks of the Senate and Assembly and copies of the bill were placed in the bill jacket. Sometime after October 17, a copy of the enrolled bill as partially approved and partially vetoed was delivered to the Wisconsin **541 State Journal, the state newspaper. The bill was published by the Wisconsin State Journal on October 20, 1977.

Subsequent to the commencement of this action and following the date of oral arguments in this court, the *685 legislature on January 24, 1978, acted on the Governor's partial veto, but failed to secure the necessary two-thirds vote to override the veto.

The petitioners' contentions are directed principally to the partial vetoes of the Governor of secs. 51 and 53 of the enrolled bill. Sec. 51 of the enrolled bill created sec. 71.095 of the Wisconsin Statutes to provide in part as follows:

"(1) Every individual filing an income tax statement may designate that their income tax liability be in-

creased by \$1 for deposit into the Wisconsin Election Campaign Fund for the use of eligible candidates under s. 11.50."

Acting Governor Schreiber exercised his partial veto by lining out the words, "that their income tax liability be increased by," and the words, "deposit into." The section as changed by the partial veto reads: "(1) Every individual filing an income tax statement may designate \$1 for the Wisconsin Election Campaign Fund for the use of eligible candidates under s. 11.50."

It is conceded that the bill as enrolled would require taxpayers to "add on" to their tax liabilities the sum of \$1 if they wished that sum to go to the campaign fund. As changed by the Governor's partial veto, a taxpayer instead elects to designate that the sum of \$1 be "checked off" or expended from the state general funds for the purposes of the Election Campaign Fund.

The parties have stipulated that the change made in sec. 51 will result in approximately \$600,000 in tax funds being expended directly for political purposes per annum. Under the bill as passed by the Legislature, only the sum which taxpayers agreed to have added to their tax liability would have been used for political purposes. Under the provisions of sec. 51 as partially vetoed, the sums used for political purposes will come out of general tax revenues.

The change in sec. 53 was made by the veto of the portion which provided:

*686 "(1) Section 71.095 of the statutes, as created by this act, shall apply to all individual income tax returns for any calendar year or corresponding fiscal year which commences not more than 6 months preceding the effective date of this act, and to each calendar year or corresponding fiscal year thereafter."

It is alleged by the Attorney General [FN1] that the partial veto of sec. 53 accelerated the effective date of the bill by one year.

FN1. The Attorney General was named as a respondent in the petition of Kleczka and Shabaz. He, however, joins with the petitioners in contending that the partial veto

was procedurally defective. He contends that the attempted partial veto operated as a veto of the whole law.

The attack on the partial veto is threefold. The petitioners, Senator Kleczka and Representative Shabaz, contend that the partial vetoes were totally ineffective, because neither the enrolled bill nor the part partially vetoed was returned to the Assembly within the time limited by the Constitution. They are joined in this contention by the Attorney General.

The petitioners also contend that Bill 664 was not an appropriation bill and, therefore, not subject to the partial-veto provisions of art. V, sec. 10. The Attorney General, although he contends that the partial veto was unauthorized, acknowledges that Bill 664 was an appropriation bill within the meaning of the Constitution.

The petitioners also contend that, even were the bill held to be "returned" in accordance with the Constitution and even were it an appropriation bill, the vetoes attempted here were unauthorized by the Constitution, because the Governor may not, in the exercise of a partial veto, strike language from a bill unless it is severable and cannot strike from the bill provisos or conditions on an appropriation that were placed thereon by the Legislature. The Attorney General joins in this contention.

****542** It is our conclusion that Enrolled Bill 664 was an appropriation bill and that a proper return was made to the *687 originating house of the Legislature within the six days allowed by the Constitution. We conclude that the portions stricken were severable from the enrolled bill; and corollary to the latter conclusion, we conclude that the bill as partially vetoed by the Governor and published by the Secretary of State was a complete, workable bill, which meets the requirements heretofore stated by this court to be mandated by the Constitution. The portion approved by the Governor became effective upon publication by the Secretary of State.

[1] We give attention to each contention in turn, considering first whether the bill was an appropriation bill in the terms of the Constitution.

The constitutional provision applicable is art. V, sec. 10. The Constitution as amended by the referendum of November 30, 1930, provides:

"Governor to approve or veto bills; proceedings on veto. Section 10. (As amended Nov. 1908 and Nov. 1930) Every bill which shall have passed the legislature shall, before it becomes a law, be presented to the governor; if he approve, he shall sign it, but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large upon the journal and proceed to reconsider it. Appropriation bills may be approved in whole or in part by the governor, and the part approved shall become law, and the part objected to shall be returned in the same manner as provided for other bills. If, after such reconsideration, two-thirds of the members present shall agree to pass the bill, or the part of the bill objected to, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the members present it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the members voting for or against the bill or the part of the bill objected to, shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within six days (Sundays excepted) after it shall have been presented to him, the same shall be a law *688 unless the legislature shall, by their adjournment, prevent its return, in which case it shall not be a law."

Under the Constitution only appropriation bills are susceptible to a partial veto. In the event Bill 664 was not an appropriation bill and not subject to a partial veto, the petitioners are correct and the Governor was not authorized to disapprove less than the whole of the bill.

Because we find that Bill 664 is an appropriation bill, we do not decide the effect of a Governor's attempted partial veto of a bill that is not an appropriation bill.

The petitioners concede that the bill as it left the Governor's hands was an appropriation bill, but they contend, properly, that it is not in that posture that the nature of a bill should be determined. The question is whether it was an appropriation bill when it was de-

livered to the Governor. They argue that the bill in its enrolled form as submitted to the Governor was not an appropriation bill.

Under the provisions of the enrolled bill, the sums added on to the taxpayers' liability and paid into the treasury are to be deposited to the general funds. The Secretary of Revenue is designated to certify the amount of money deposited in the general fund as the result of the add-on to tax liability. The amount determined under sec. 71.095, Stats., by the Secretary is then to be paid into the Wisconsin Election Campaign Fund annually, on August 15, by the State Treasurer. From that fund, there is made a continuing appropriation of money as certified under sec. 71.095 to provide for payments to the candidates who qualify under sec. 11.50.

It is clear, from these provisions, that the bill as it went to the Governor authorized the expenditure of public moneys. The bill set apart a portion of the public funds for a ****543** public purpose the financing of election ***689** campaigns. This meets the definitions of an appropriation bill as set forth in State ex rel. Finnegan v. Dammann, 220 Wis. 143, 148, 264 N.W. 622 (1936):

"In Webster's New International Dictionary, the following definition is made:

" 'Appropriation bill. Govt. A measure before a legislative body authorizing the expenditure of public moneys and stipulating the amount, manner, and purpose of the various items of expenditure.'

"In State v. La Grave, 23 Nev. 25, 41 P. 1075, 1076, the court said:

" 'An appropriation in the sense of the constitution means the setting apart a portion of the public funds for a public purpose.'

"In Hunt v. Callaghan, 32 Ariz. 235, 257 P. 648, 649, the court said:

" 'An appropriation is "the setting aside from the public revenue of a certain sum of money for a specified object, in such manner that the executive officers of the government are authorized to use that money, and no more, for that object, and no other."' " (at 148, 264 N.W. at 624.)

It should be noted, moreover, that that opinion posited: "... a bill containing any appropriation is an ap-

propriation bill." (at 147, 264 N.W. at 624.) The court in Finnegan assumed that such contention was correct but concluded that it was inapplicable to the facts before it, because the bill before the court contained no appropriation. It held that the bill with which it was concerned was not an appropriation bill because:

"It deals with appropriations neither in the title nor in the body of the act, and would not be considered such a bill either in common speech or in the language of those who deal with legislative or governmental matters." (at 149, 264 N.W. at 624.)

Enrolled Bill 664 as it reached the Governor in the instant case is quite different than the bill before the court in Finnegan. Enrolled Bill 664 bears in its caption, ***690** "An Act . . . making appropriations . . ." Sec. 47 of the bill provides for:

" . . . a continuing appropriation, from the Wisconsin election campaign fund, the moneys certified under s. 71.095(2) to provide for payments to candidates under s. 11.50."

Under the standards of Finnegan, the enrolled bill submitted to the Governor was an appropriation bill within the meaning of art. V, sec. 10, of the Constitution.

The petitioners argue, however, that "appropriation" as used in art. V, sec. 10, refers only to an authorization to expend "public money" as they believe public money is defined in B. F. Sturtevant Co. v. Industrial Comm., 186 Wis. 10, 202 N.W. 324 (1925). They rely upon Sturtevant to support the proposition that legislative directions to disburse special funds for special purposes do not constitute an appropriation in the constitutional sense. They argue that, because the bill as it reached the Governor's desk provided that the Election Campaign Fund was to be created solely from voluntary payments, the Campaign Fund should be viewed as a special fund for a special purpose. They conclude, therefore, that the directions for disbursement of the aggregate of the add-ons is not of a public fund which may be appropriated within the constitutional meaning of that word.

We conclude that the facts of Sturtevant make its rationale irrelevant to the instant case. Sturtevant was

decided prior to the 1930 amendment to the Constitution which provided for partial vetoes and was concerned, not with the Governor's authority to exercise his veto power, but with the obligation of the Legislature to make an appropriation of "public or trust money" only upon a ye and nay vote. Sturtevant construed art. VIII, sec. 8, of the Wisconsin Constitution, which provides in part:

***691** "On the passage in either house of the legislature of any law which . . . makes, continues or renews an appropriation of public or trust money . . . the question shall be taken by yeas and nays, which shall be duly entered on the journal . . ."

****544** In Sturtevant the court was concerned with provisions of the Workers Compensation Act. Ordinarily, when an employee is killed in the course of his employment, the benefits are paid to his dependents. Where the worker leaves no dependents, the employer is obligated to pay a statutorily determined sum into the state treasury. The bill before the court in Sturtevant provided that such sums were to be paid out by the state treasury on directions of the Industrial Commission. When the bill was passed, the Senate either failed to require ye and nay votes or failed to show such votes in its journal. It was contended that the act was invalid because a ye and nay vote is required on the appropriation of public or trust money. The court held this was not public money, because it was intended for a special purpose and, accordingly, a ye and nay vote was not required. It did not, however, hold that it was not an appropriation. On the contrary, the court held, "It is plain the act 'makes . . . an appropriation of . . . money.' " (at 16, 202 N.W. at 326.) It was, however, determined that it was not the type of appropriation that requires a ye and nay vote.

While, on the basis of Sturtevant, it is conceivable that one could argue that a ye and nay vote was not required in respect to the passage of the appropriation section of Enrolled Bill 664, it is irrelevant to the determination of whether 664 is an appropriation bill.

We believe that the language quoted from Sturtevant is dispositive of the fact that the bill with which the court was concerned in that case was indeed an appropriation bill, although not one requiring yeas and nays. Moreover, Sturtevant goes on to say that the

mere ***692** fact that trust funds are created or disbursed would not necessarily obviate the necessity of conducting a ye and nay roll call upon passage of such legislation. The court stated:

"Other trust funds might be created from time to time which would be public funds, and in which all the people of the state would have a beneficial interest, and such funds would naturally fall within the meaning and intent of the constitutional provision." (at 19-20, 202 N.W. at 327.)

Accordingly, even were we to distort the clear meaning of Sturtevant, the funds for election purposes which were created by the voluntary add-on provided in Enrolled Bill 664 are those in which "all the people of the state would have a beneficial interest." Even under the strained interpretation of the petitioners, the funds appropriated by the voluntary add-on would constitute an appropriation of public money requiring ye and nay votes under the authority of Sturtevant.

The United States Supreme Court, in discussing the federal election campaign act as amended in 1974, which appropriated funds for the financing of election campaigns, pointed out that the use of public funds to facilitate and enlarge public discussion and participation in the electoral process furthered "goals vital to a self-governing people." Buckley v. Valeo, 424 U.S. 1, 93, 96 S.Ct. 612, 670, 46 L.Ed.2d 659 (1976). The Wisconsin law, which parallels the goals of the federal election campaign act, is one in which all the people have a beneficial interest.

The argument that Enrolled Bill 664 was not an appropriation bill is unfounded. It was a bill subject to the exercise of the Governor's partial-veto power.

[2] The petitioners additionally claim that the Governor failed to comply with the mandatory procedures of art. V, sec. 10. That section of the Constitution provides that any bill presented to the Governor and not returned by ***693** him within six days becomes law without his approval if the Legislature is in session. Petitioners insist that the Governor did not make the return mandated by the Constitution. It is argued that, because the required return was not made, the six-day rule applies, and despite the partial veto, En-

rolled Bill 664 has become a law because the Governor failed to act, as the Constitution requires, within the time period allowed.

The stipulation of the parties recites:

****545** "7. The enrolled bill, as signed by the Acting Governor, was not delivered to the Assembly nor was any part of the signed, enrolled bill delivered to the Assembly by the Acting Governor. The Acting Governor caused nothing to be deposited with the Assembly or the clerk thereof in relation to said bill other than the aforesaid message and a letter dated October 11, 1977 from the Acting Governor . . . stating that bill 664 was partially vetoed and approved, signed and deposited in the Secretary of State's office. These documents were deposited with the Assembly Clerk on October 11, 1977. The Assembly Journal, dated October 12, 1977, makes reference to the aforesaid message and letter."

The petitioners, by this stipulation, acknowledge that a writing setting forth the fact of the partial veto and the reasons for the Governor's objections was timely filed with the Legislature, but they point out that the agreed facts undisputably show that neither the bill nor the part of the bill disapproved was delivered to the originating house.

The petitioners rely upon the language of the Constitution which states that, in respect to total vetoes, the Governor, if he shall not approve a bill "shall return it, with his objections, to that house in which it shall have originated." The same requirement, petitioners contend, is mandated upon the Governor in respect to partial vetoes, because the Constitution states, "the part objected ***694** to shall be returned in the same manner as provided for other bills."

From the juxtaposition of these two clauses in art. V, sec. 10, the petitioners argue that, although a part of the bill the part not subjected to the partial veto will become law without further action of the Legislature, nevertheless the entire bill, including the portion of the bill of which the Governor approved, must be returned.

This conclusion, on its face, is contrary to the express words of the Constitution. Without a doubt, the most

the Constitution requires in respect to a partial veto is that "the part objected to shall be returned." There is no requirement that the part approved be resubmitted to the Legislature. To require such a resubmission would be meaningless and superfluous. The Legislature had already exhausted any authority it had in respect to the portion of the enrolled bill which was approved by the Governor.

This interpretation has previously been approved by this court in the case of State ex rel. Martin v. Zimmerman, 233 Wis. 442, 448, 289 N.W. 662, 664 (1940). The court in that case, in referring to the contentions there that the entire bill, a portion of which had been partially vetoed, must be returned by the Governor to the house in which it originated, stated:

"This interpretation would destroy the whole purpose and effect of the 1930 amendment. . . the argument entirely overlooks the following provision that 'the part objected to shall be returned in the same manner as provided for other bills.' If the legislature had remained in session, only the parts of Bill No. 563, S. to which the governor objected would be returned to the legislative body."

Nevertheless, it is argued further by the petitioners that it is the duty of the Governor to return the entire bill to the Legislature after the partial veto. It is contended ***695** that the deposit of the approved portion of a bill with the Secretary of State, as was done by the Governor here, and its subsequent publication will result in piecemeal legislation.

The result of the practice followed by the Governor in the instant case, the petitioners claim, is that the portion approved, but only that portion, will become law upon publication. Legal rights, they point out, may arise in reliance upon the published portion of the bill, but when the Legislature thereafter acts to override a veto, those who have relied upon the partial publication may find their rights in jeopardy.

There are several answers to these contentions.

The first is the wording of the Constitution itself. Where there is but a partial ****546** approval, the Constitution provides, "the part approved shall become law." This demonstrates that the Legislature's con-

cern with the portion of the legislation it and the Governor have approved is at an end. Only the mechanical steps to insure that there is an enforceable law in respect to the parts approved remains. That mechanical process publication by the Secretary of State is constitutionally mandated and is independent of further legislative action on the same bill. The Constitution provides, art. IV, sec. 17, subsec. 3, "The legislature shall provide by law for the speedy publication of all laws."

Consistent with this constitutional mandate and pursuant to similar provisions in art. VII, sec. 21, which existed prior to 1977, the legislature has enacted sec. 14.08, Stats., which provides:

"The governor shall cause all legislative acts which have become laws by his approval or otherwise to be deposited in the office of the secretary of state without delay, and shall inform thereof the house in which the respective acts originated."

Sec. 985.04(2), Stats., requires that matters which have become law be immediately published in the official *696 state paper. Clearly, then, the Constitution, which provides that, when a bill is approved in part, the part approved becomes law, also provides that the law shall be speedily published. The Legislature by secs. 14.08 and 985.04(2) has recognized this can only be accomplished by delivering the approved portion of the bill to the Secretary of State and not to the Legislature.

Had the Governor returned the approved portion of the bill to the Legislature, he would have acted contrary to the mandatory requirement of the Constitution, and he would have expressly flouted the legislative direction to deposit with the Secretary of State acts which become laws.

Despite what we perceive as the clear intention of a constitutional provision, the petitioners argue that, when the Governor fails to return the entire bill to the originating house, the Legislature has nothing before it and, in a sense, it would be required to violate art. IV, sec. 17, subsec. 2, which provides, "No law shall be enacted except by bill." The override of a veto, however, is not the enactment of a bill. The bill has been previously enacted. The vote by the Legislature

following the veto is not for the purpose of enacting the bill, but for the purpose of nullifying the Governor's action and of allowing the previously enacted legislation to operate.

Moreover, the failure to return the entire bill, or a portion of the bill, prior to legislative action has never thwarted the right of the Legislature to act. The petitioners have aided the court by tabulating partial vetoes from 1931 to 1977. By comparing the publication date set forth therein with the date on which the legislative action on the partial veto took place, it can be determined when a bill was published before the originating house had the opportunity to act on the partial veto. According to the petitioners, this is objectionable piecemeal legislation. The petitioners have set forth in their *697 table 108 partial vetoes. Our inspection of that table demonstrates that 64 [FN2] bills have been enacted piecemeal in the sense used by the petitioners, i. e., the part approved was published prior to the time the originating house could act on the partial veto. The petitioners have ably expressed hypothetical problems that may result from such piecemeal legislation, but in practice no such problems have arisen. There has been no showing that either the public or the private interest has been damaged by this extensive "piecemeal" type of legislation.

FN2. This figure includes the partial veto history of Bill 431 A (1975), the publication date of which is erroneously printed in the petitioners' appendix as October 29, 1976. In fact the bill was published on October 29, 1975, prior to the legislative action on the veto on January 28, 1976.

To return the entire bill to the originating house prior to publication would defeat the purpose which the partial-veto provision of the Constitution was intended to serve.

**547 State ex rel. Martin v. Zimmerman, supra, stated that, prior to the amendment, to art. V, sec. 10, which gave the Governor the partial veto power, the Governor was faced with a Hobson's choice when confronted with a bill which contained pressing socially necessary legislation but which also contained

matters which the Governor felt were detrimental to the public welfare. His choice prior to 1930 was either to veto the bill in its entirety and forego the good the legislation would accomplish or to accept and approve the bad with the good. The Governor's dilemma at least in respect to appropriation bills was ameliorated by the 1930 amendment.

Were we, in the absence of a clear constitutional mandate, to insist that the Governor be required to return the approved portion of the bill to the Legislature without publication, this court would by its mandate *698 reinstitute, to a degree at least, the very evil the amendment sought to rectify. In effect, if such were our mandate, no portion of the law, although it had received the approval of the Governor and a majority vote of the Legislature, and no matter how beneficial or necessary it might be, could have the force of law until the Legislature acted on the partial veto. This would be contrary to the purpose of the 1930 constitutional amendment. It would nullify the Governor's approval of legislation already passed.

Although the Legislature has no authority to act in respect to the portion of an enrolled bill approved by the Governor, under the procedure contemplated by the petitioners, the bill could be retained in the Legislature for an indefinite period. No procedures have been cited by the petitioners which would prevent the Legislature from holding the bill and preventing publication of a law passed by the Legislature and approved by the Governor. The Constitution, reason, and the enactments of the Legislature compel the conclusion that the portion of the bill approved by the Governor not be returned to the Legislature but, rather, that it be deposited with the Secretary of State to be published and have the force of law.

Similar factors compel the conclusion that the portion of a bill vetoed not be physically returned in bill form to the Legislature.

The Constitution provides, where there is a partial veto, "the part objected to shall be returned in the same manner as provided for other bills."

True, State ex rel. Martin v. Zimmerman, *supra*, states hypothetically and as obiter dicta :

"If the legislature had remained in session, only the parts of Bill No. 563, S. to which the governor objected would be returned to the legislative body." (at 448, 289 N.W. at 665)

While it can be argued that this statement in Martin gives support to the petitioners' position that there should *699 be a physical delivery of the portions of the bill vetoed to the originating house, it is apparent that the court was not using "returned" in that sense. If its definition of "returned" were so limited, the court could not, with literal consistency, have held that the approved portion of the bill need not be returned. "Returned" is used in the sense that it means "submitted for further consideration by the legislature."

Moreover, the physical return to the Legislature of the vetoed parts of a bill would lead to an absurdity. In this case, the petitioners would have the Acting Governor send to the Legislature excisions from the enrolled bill, in respect to sec. 51, reading, "that their income tax liability be increased by," and the words, "deposit into"; and, in respect to sec. 53, the excision from sec. 1 reading:

"Section 71.095 of the statutes, as created by this act, shall apply to all individual income tax returns for any calendar year or corresponding fiscal year which commences not more than 6 months preceding the effective date of this act, and to each calendar year or corresponding fiscal year thereafter."

It would seem that the separate delivery of these vetoed portions of the enrolled bill to the originating house would be pointless. **548 Moreover, after such physical excisions, as the Acting Governor points out, the bill as approved could not then be published in a form which would demonstrate to the public the scope or effect of the Governor's partial veto. The petitioners have not questioned the respondents' position that the Secretary of State would not be obliged to publish as law a bill revealing that portions of it had been physically removed. The Secretary of State would not be required to publish it at all.

We cannot conclude that what "shall be returned" refers to the excised clippings from the enrolled bill. What must be returned and that which is the sine qua

*700 non for further legislative action is the Governor's recitation of the portions of the bill he has refused to approve and the reasons therefor. When a governor exercises his power of complete veto, his under-the-constitution obligation is to return the entire bill, "with his objections, to the house in which it shall have originated, who shall enter the objections at large upon the journal and proceed to reconsider it."

In other words, what is necessary for the Legislature to proceed with a vote to override a veto is a written objection by the Governor addressed to the Legislature which may be entered in the legislative journal with sufficient completeness that the Legislature knows the nature and scope of the Governor's objections. This was done. The constitutionally required return was made when the Governor submitted his objections to the bill and his veto message in a timely fashion to the originating house of the Legislature. The Constitution requires no more.

Because no conflicting constitutional requirements are put in jeopardy when an entire bill is vetoed, it is appropriate and reasonable to return the entire bill to the originating house; but neither the Constitution, public policy, nor logic requires the return of the whole bill or the excised portions of a bill in the case of a partial veto. To do so would frustrate the objectives of the 1930 constitutional amendment and of other portions of the Constitution which require that laws, as approved by the Governor, be speedily published and put into effect.

We are satisfied that the procedure used by the Acting Governor in the partial veto of Bill 664 fully complied with the mandates of the Constitution. The Acting Governor, by his letter and partial-veto message, timely informed the Legislature that he approved parts of the bill and disapproved parts of the bill. He gave his reasons*701 for his objections to the specific portions of the bill with which he was in disagreement.

He also stated in his message to the legislature that he had delivered the official copy of the enrolled bill to the Secretary of State. Although the official receipt was not executed until October 17, 1977, after the

Legislative Reference Bureau had an opportunity to assure the complete accuracy of the document, it is not argued that the enrolled bill was not in fact delivered to the Secretary of State on October 11, 1977. The Governor so stated in his message to the Legislature. Accordingly, by that delivery and by that declaration of delivery, the Governor on that date put the bill beyond his own reach. By his own actions, the Governor was no longer in a position to reconsider or to revise his previous partial approval and partial disapproval of the bill. The Governor by the delivery and by his own statement to the Legislature terminated his time for deliberation on the bill.

In addition, the Governor's message informed the Legislature that it was from that time forward within the Legislature's jurisdiction to deliberate and to consider the veto. The message was sufficient to inform the Legislature of the Governor's objections and sufficient to enable it to spread upon its journal portions of the bill objected to. This in fact the Legislature did on October 12, 1977, as is evidenced from the legislative journals.

By its actions the Legislature acknowledged the receipt of the Governor's objections and was thereafter in a position to consider action on the veto. That the Governor's message and statement of objections **549 was sufficient is evidenced by the Legislature's ability to take action on January 24, 1978, when it failed to override the veto.

At oral argument, moreover, it was acknowledged that procedures adopted by the Legislative Reference Bureau *702 with the consent of the Legislature assured that accurate and reliable copies of the enrolled bill, showing the parts approved and the parts disapproved, were placed in the hands of each member of the Legislature well in advance of consideration of the veto.

Certainly, the effect of this procedure, approved by the Legislature, was to remove any possible doubt in respect to what parts of the bill were approved and what parts were disapproved.

Moreover, we find the practice utilized here by the Acting Governor to be consistent with the mandatory

provisions of the Constitution even were there not a long history of similar practice acquiesced in by the Legislature.

According to exhibits furnished by the petitioners, it appears that, shortly after the constitutional amendment was adopted in 1930, it was the practice of governors to return the entire bill, including those portions vetoed, to the Legislature for further action.

We conclude, however, that under the plain meaning of the Constitution and in light of the intent of the 1930 amendment, governors who followed that practice were not required to do so and acted in derogation of the gubernatorial powers intended to be conferred by the constitutional amendment.

Additionally, it is acknowledged in respect to partial vetoes that, since 1947, with a few exceptions, it has been the practice of the governor to return neither the entire bill nor the vetoed portions of the bill to the Legislature. Instead Governors generally, since 1947, have given the Legislature only a letter and a message of objections. They delivered the entire enrolled bill to the Secretary of State showing the vetoed portions. The bill was thereupon published and, in respect to the parts approved, made effective as law usually prior to the time the Legislature acted on the partial veto. Certainly, as conceded by the petitioners, for the last *703 fifteen years, more or less, there has been an acquiescence by the Legislature in the very procedure adopted by Acting Governor Schreiber.

In terms of constitutional law, the United States Supreme Court has concluded that, where Congress has acquiesced in the procedures utilized by the president in his relations to the congress, such acquiescence represents an agreement that the procedures utilized by the president properly interpreted the constitutional provisions. Okanogan Indians v. United States (The Pocket Veto Case), 279 U.S. 655, 49 S.Ct. 463, 73 L.Ed. 894 (1929).

This court has followed a similar rule and stated that great weight will be attached to long continued legislative practice and acquiescence as determinative of the proper interpretation of constitutional provisions. Integration of Bar Case, 244 Wis. 8, 31, 11

N.W.2d 604, 12 N.W.2d 699 (1943).

We conclude, however, that, even were the practice employed by the Acting Governor in the instant case not one of long standing, the procedures employed here satisfy the mandatory requirements of the Constitution with respect to the return required to the originating house upon the exercise of a partial veto.

Having concluded that Enrolled Bill 664 was an appropriation bill, and having concluded that the Governor complied with the mandatory constitutional procedures in making his return of the partial veto to the originating house of the Legislature, the question remains whether the words excised were appropriately removed by partial veto.

The words removed had the effect of replacing taxpayers' voluntary add-on to their personal tax liabilities the sum of \$1 for political purposes, with an election by the taxpayer to direct that \$1 be paid out of general funds and general tax revenues.

*704 The additional charge to the general fund is estimated to be \$600,000 per annum. This the petitioners claim created an appropriation**550 where none existed before. Implicit in the petitioners' argument and explicit in the argument of the Attorney General is the additional argument that voluntary contributions were a proviso or condition upon which the appropriation depended and that such proviso or condition was ipso facto inseverable from the appropriation itself.

The petitioners acknowledge that the Legislature cannot, by a statement incorporated in the legislation, frustrate the Governor's partial-veto power by declaring that certain portions of a bill are inseverable. In that respect, the petitioners are correct. Severability, petitioners acknowledge, is the test of the partial-veto power. Petitioners concede that what is severable may be excised from the legislation by the Governor's partial veto.

The petitioners correctly assert that severability must be determined, not as a matter of form, but as a matter of substance. The brief of the petitioners argues that a partial veto which would make an appropriation where none existed before is not a severable

change.

As stated above, we conclude that, for a Governor to exercise a partial veto, the bill must, as it comes to the Governor, contain an appropriation. The principal thrust of the petitioners is based on the assumption that this bill contained no appropriation when it reached the Governor. We have concluded that assumption is incorrect. The bill clearly provided for an appropriation of funds obtained by a voluntary add-on option afforded a taxpayer. Those funds were then appropriated for election purposes by the bill.

Hence, it is incorrect, under the facts, for the petitioners to assert that the bill as altered by the Governor created an appropriation where none existed before. *705 The Governor's veto left the appropriation untouched. Rather, it affected the source from which the appropriated funds were to be derived. Accordingly, to conclude, as the petitioners would have us do, that this bill is inseverable because it created an appropriation where none existed before is patently incorrect.

Severability is indeed the test of the Governor's constitutional authority to partially veto a bill, but the test of severability is that established by the Wisconsin court and not by courts which operate under a different constitution. We reaffirm the conclusion reached by this court in State ex rel. Sundby v. Adamany, 71 Wis.2d 118, 128, 237 N.W.2d 910, 914 (1976):

"... that analysis of the use made of the power in the instant circumstances must be limited to application of principles expressed by this court in previous cases in which the exercise of the partial veto was challenged."

Three major Wisconsin cases have discussed the power of the Governor to partially veto a bill under the authority of art. V, sec. 10: State ex rel. Wisconsin Telephone Co. v. Henry, 218 Wis. 302, 260 N.W. 486 (1935); State ex rel. Martin v. Zimmerman, 233 Wis. 442, 289 N.W. 662 (1940); State ex rel. Sundby v. Adamany, 71 Wis.2d 118, 237 N.W.2d 910 (1976).

Each of these cases emphasizes that the power of the Governor to approve or disapprove a bill "in part" is a far broader power than that conferred upon Gov-

ernors under the partial-veto provisions of most state constitutions. In most instances, the power of the Governor is confined to the excision of appropriations or items in an appropriation bill.

The Henry case, *supra*, extensively discussed the distinction between the Wisconsin Constitution and other state constitutions which give a more limited power to the Governor. The Henry case sanctioned the Governor's *706 exercise of the partial veto of appropriations, general legislation, and other parts of an appropriation bill which did not contain specific appropriations. The court concluded that any portion of an appropriation bill was severable and could be excised so long as it left, in respect to "the parts approved, as they were in the bill . . . a complete, entire, and workable law." Henry, 218 Wis. at 314, 260 N.W. at 491.

**551 In the Henry case, one of the provisions vetoed by the Governor was the express statement of the legislative intent. The court acknowledged that the powers conferred on the Governor by the Constitution in respect to the partial veto were broad indeed. It stated:

"It may well be that sec. 10, art. V, Wisconsin Constitution, was not intended to empower the Governor, in vetoing parts of an appropriation bill, to dis sever or dismember a single piece of legislation which is not severable, or so as to leave merely provisions which are not a complete or fitting subject for a separate enactment by the Legislature. Although that may not have been intended, there is nothing in that provision which warrants the inference or conclusion that the Governor's power of partial veto was not intended to be as coextensive as the Legislature's power to join and enact separable pieces of legislation in an appropriation bill. As the Legislature can do that in this state, there are reasons why the governor should have a coextensive power of partial veto, to enable him to pass, in the exercise of his quasi-legislative function, on each separable piece of legislation or law on its own merits." (at 314-15, 260 N.W. at 492.)

Accordingly, the court in Henry stated that the Governor's power to disassemble legislation by the partial veto was as broad as the Legislature's power initially to join the legislation into a single bill. It put but one

limitation on the Governor's power, and that is that the remainder after partial veto be a "complete, entire, and workable law." It found in *Henry* that the part approved by the Governor constituted, independently *707 of the disapproved portions, a complete, entire, and workable law.

In the subsequent case of *Martin*, *supra*, the rationale of *Henry* was followed. Therein, the court said:

"No contention is made in the instant case that the parts of Bill No. 563, S. approved by the governor do not leave a complete body of law of proper subject matter for a separate enactment by the legislature. We think it clear that ch. 533, Laws of 1939, which contains all of Bill No. 563, S. excepting the parts thereof disapproved by the governor, constitutes an effective and enforceable law on fitting subjects for a separate enactment by the legislature." (233 Wis. at 449, 289 N.W. at 665.)

The court in *Martin* made clear that what must survive the Governor's veto was an enactment which could have been passed initially in the exercise of the Legislature's power and was a workable law. The test of severability was set forth in those terms only. As the court stated in *Martin*:

"The question here is whether the approved parts, taken as a whole, provide a complete workable law. We have concluded that they do, and we must give them effect as such." (at 450, 289 N.W. at 665.)

The workable-law test was reemphasized in *Sundby*, *supra*. The court there stated:

"(T)he action taken by the governor was valid, in that the portions vetoed, although not actually items of appropriation, were separable provisions, not constituting provisos or conditions to an item of appropriation, and the remaining portions constitute a complete and workable law." (71 Wis.2d at 135, 237 N.W.2d at 918.)

[3] We conclude that the test of severability has clearly and repeatedly been stated by this court to be simply that what remains be a complete and workable law. The power of the Governor to disassemble the law is *708 coextensive with the power of the Legislature to assemble its provisions initially.

This conclusion in respect to severability is consistent with the Legislature's own declaration. In sec. 990.001(11), Stats., the Legislature stated, "The provisions of the statutes are severable. The provisions of any session law are severable. . . ."

While that legislative declaration is concerned primarily with the construction and effect of legislation which may be in part defective, it evinces a general legislative **552 purpose to give force to portions of legislation which survive a constitutionally authorized nullification, whether that nullification be by the courts or by the Governor.

[4] In the present case it is undisputed that what remained after the Governor's partial veto is a complete, entire, and workable law. As such, it is severable and reflects the proper exercise of the partial-veto power conferred on the Governor by the Constitution of the state.

In addition, the cases decided by this court have repeatedly pointed out that, because the Governor's power to veto is coextensive with the legislature's power to enact laws initially, a governor's partial veto may, and usually will, change the policy of the law. The *Martin* case specifically recognized that:

"It must be conceded that the governor's partial disapproval did effectuate a change in policy; so did the partial veto of the bill involved in the case of *State ex rel. Wisconsin Tel. Co. v. Henry*." (233 Wis. at 450, 289 N.W. at 665.)

In *Sundby*, *supra*, we pointed out that the Wisconsin case law recognizes that the Governor has a constitutionally recognized role in legislation. We stated in *Sundby*:

"Some argument is advanced that in the exercise of the item veto the governor can negative what the legislature has done but not bring about an affirmative *709 change in the result intended by the legislature. We are not impressed by this argued distinction. Every veto has both a negative and affirmative ring about it. There is always a change of policy involved. We think the constitutional requisites of art. V, sec. 10, fully anticipate that the governor's action may alter the policy as written in the bill sent to the governor by the legislature." (71 Wis.2d at 134, 237

N.W.2d at 918.)

Thus, the fact that the Acting Governor's partial veto in the instant case changed the policy of the legislation from that of encouraging add-ons to a taxpayer's personal liability to that of imposing a charge on the general fund does not lead to the conclusion that the veto power was unconstitutionally exercised. It reflected a change of policy which the Governor had the authority to make under the Constitution because his authority is coextensive with the authority of the Legislature to enact the policy initially.

It should be borne in mind, of course, that the very section of the Constitution which gives to the Governor the authority to change policy by the exercise of a partial veto also gives the final disposition and resolution of policy matters to the Legislature. The Governor's changed policy can ultimately remain in effect only if the Legislature acquiesces in a partial veto by its refusal or failure to override the Governor's objections.^[FN3]

^{FN3.} This division of legislative power between the legislature and the executive is characteristic of our constitutional system of checks and balances. Each branch of government must be able to protect itself from intrusions by the other branches. The Federalist No. 73, 492, 494 (A. Hamilton) (J. Cooke ed. 1961). Accordingly, each branch is given some power within spheres primarily controlled by the other branches. The veto power of the governor, legislative in nature, is but one example of a constitutional check and balance, and, as such, it represents a deviation from the strict theory of separation of powers. E. Mason, *The Veto Power*, sec. 100 (A. B. Hart ed. 1890); Stewart, *Constitutionality of the Legislative Veto*, 13 *Harv.J.Legis.* 593, 598-600 (1976); 6 *U.Mich.J.L.Ref.*, *Separation of Powers: Congressional Riders and the Veto Power*, 735, 748-49 (1973). In Wisconsin law, it is settled that the Governor plays a role in the legislative process through the exercise of the veto power. E. g., State ex rel. Wisconsin Telephone Co. v. Henry, 218 Wis. 302,

315, 260 N.W. 486 (1935).

The dissent cites Montesquieu on the necessity of maintaining a strict separation of powers. Not even Montesquieu, however, advocated absolute separation of powers, as is demonstrated in *The Federalist* No. 47 (J. Madison) (J. Cooke ed. 1961). The early constitutions of the several states recognized the "impossibility and inexpediency" of total separation. *Id.* No. 47, at 327.

The dissent correctly expresses concern over possible abuses by the executive of the partial-veto power. The authors of *The Federalist*, however, repeatedly alluded to the tendency, in republican forms of government, to the aggrandizement of the legislative branch at the expense of the other branches. *Id.* No. 48, at 333 (J. Madison); No. 49, at 341 (J. Madison); No. 73, at 494 (A. Hamilton). It is no answer to appeal to the separation-of-powers doctrine, because the true meaning of that doctrine is entirely compatible with a partial inter-mixture of the branches for special purposes. *Id.* No. 66, at 445 (A. Hamilton). The appropriate balance between the executive and the legislature with respect to the veto power is not, therefore, to be struck by reference to an abstract principle set forth by Montesquieu, but by reference to the language of the Wisconsin Constitution.

The very language of Montesquieu relied upon by the dissent was specifically discussed and explained by Madison in *The Federalist*. He demonstrated that the separation-of-powers doctrine set forth by Montesquieu did not require a strict division of functions between the three branches of government. Madison stated:

"(H)e (Montesquieu) did not mean that these departments ought to have no partial agency in or no controul over the acts of each other. His meaning, as his own words import, and still more conclusively as illustrated by the example in his eye, can amount to no more than this, that where the whole power of one department is exercised by the same hands which possess the whole power of another department, the fundamental principles of a free constitution, are subverted." *Id.* No. 47, at 325-26.

More recently, Richard Neustadt in his volume, *Presidential Power* (1961), pointed out that the phrase, "separated powers," tended to trap Americans into a stereotyped conception of democratic government

that was never intended by the founding fathers. He wrote:

"The constitutional convention of 1787 is supposed to have created a government of 'separated powers.' It did nothing of the sort. Rather, it created a government of separated institutions sharing powers." (at 33)

A recognition of this principle of shared powers was voiced by President Eisenhower when he stated in 1959, "I am part of the legislative process." *Id.*, at 33. Even these accepted principles of shared, rather than completely separated, powers under the United States Constitution do not reflect the broader grant of legislative power to the Wisconsin Governor under the partial-veto authority of art. V, sec. 10. The separation-of-powers doctrine of the Federal Constitution, moreover, is inappropriate to the partial-veto power of the Wisconsin Governor, for the President has no partial or item veto authority. Also, as is shown elsewhere in this opinion and in prior opinions of this court, the partial-veto power of the Wisconsin Governor is far broader than the item-veto power conferred by the constitutions of other states. It is, therefore, constitutionally inappropriate to find answers to Wisconsin constitutional problems in respect to partial-veto powers by resort to the clichés that have supplied an unwarranted gloss on the true meaning of federal "separation of powers" or by seeking to analogize or to equate the Wisconsin Constitution with other state constitutions containing more restrictive grants of legislative power to the governor.

****553 *710** There remains yet another facet of the authority of the Governor to exercise a partial-veto power that should ***711** be explored. It is urged by the petitioners and by the Attorney General that provisos and conditions of an appropriation may not be severed from the appropriation itself. It is argued that, even when a workable bill remains after the exercise of the partial veto, the fulfillment of that test alone does not make what remains a properly severable and independent bill. The position of the antagonists to the Governor's partial veto in this case is that, whenever an appropriation is made on the ***712** basis of a legislatively established proviso or condition, the provisos themselves may not be separately vetoed, but the entire appropriation, including the

provisos, must be excised by the Governor.

In the instant case it is argued that the appropriation of moneys for political purposes was conditioned by the Legislature upon the voluntary contribution to be made by taxpayers and that proviso or condition is inseverable from the appropriation itself.

The conclusion urged by the petitioners and the Attorney General reasonably could be reached from the dicta of Wisconsin cases. We are satisfied, however, that those pronouncements are dicta only and, more importantly, have no relevance to interpretation of the partial-veto provisions of the Wisconsin Constitution.

In Henry, supra, the first case to come before the court on the partial veto, petitioners therein relied upon State ex rel. Teachers and Officers v. Holder, 76 Miss. 158, 23 So. 643 (1898). **[FN4]** The objectors to the ****554** exercise ***713** of the governor's partial-veto power in Henry contended that the governor was not empowered to disapprove a proviso or a condition placed upon an appropriation. The court in Henry found, however, that the portions vetoed were neither a proviso nor a condition which the legislature had placed upon the appropriation. The court said:

FN4. Holder is one of the earliest and most influential cases on the scope of the partial-veto power. It is clearly the seminal case on the issue of the governor's power to veto a proviso or condition to an appropriation and has been cited frequently by other courts. Many of the cases relying on Holder, however, have arisen in states where the governor's partial-veto power is limited to vetoing "items" as opposed to "parts" of the bill. E. g., Fairfield v. Foster, 25 Ariz. 146, 214 P. 319 (1923); Black & White Taxicab Co. v. Standard Oil Co., 25 Ariz. 381, 218 P. 139 (1923); Fergus v. Russel, 270 Ill. 304, 110 N.E. 130 (1915); State ex rel. Cason v. Bond, 495 S.W.2d 385 (Mo.1973); State ex rel. Sego v. Kirkpatrick, 86 N.M. 359, 524 P.2d 975 (1974); Commonwealth v. Dodson, 176 Va. 281, 11 S.E.2d 120 (1940). Reliance

on Holder even in the context of an "item veto" power is misplaced and is a mere "make-weight." In an "item veto" state, it would appear that provisos or conditions may not be vetoed, because such veto would subdivide the item, contrary to the constitutional provision. Holder, which rests in part on a specific constitutional reference to the power of the legislature to impose conditions (see text, *infra*), is *sui generis* and was unnecessary as authority in "item veto" states, and is inappropriate and irrelevant to the partial-veto powers of the Wisconsin Governor.

"... we find it unnecessary to decide in this case whether the Governor is empowered to disapprove a proviso or condition in an appropriation bill, which is inseparably connected with the appropriation, because, upon analyzing the terms of the bill in question, we have concluded, for reasons hereinafter stated, that the parts which were disapproved by the Governor were not provisos or conditions which were inseparably connected to the appropriation. If they had been, the decision in State ex rel. Teachers & Officers v. Holder, 76 Miss. 158, 23 So. 643, would afford support for the plaintiff's contention." (218 Wis. at 309-10, 260 N.W. at 490.)

This is dicta, because the issue was not raised in the Henry case. The Henry case does not hold that the governor cannot disapprove a condition placed upon an appropriation by the legislature.

The dicta in Henry is typical of the custom, unfortunately too often indulged in by courts, of telling a disappointed litigant that, "You are wrong in this case, but if the facts were different you might be right." The Henry case represents an inconsidered statement by the court on an issue not before it and has no precedential value. The dicta was, however, alluded to in Sundby, in which this court concluded:

"(T)he action taken by the governor was valid, in that the portions vetoed, although not actually items of appropriation, were separable provisions, not constituting *714 provisos or conditions to an item of appropriation, and the remaining portions constitute a complete and workable law." (71 Wis.2d at 135, 237

N.W.2d at 918.)

No provision of art. V, sec. 10, of the Constitution limits the Governor's authority to veto appropriations because of any legislatively imposed conditions. The alleged limitation arises from the language of Henry. The source of the dicta which has led to the contention of the petitioners is apparent from the text of Henry. Henry relies upon the Mississippi case of Holder, supra, for the contention that the governor's partial-veto power cannot be exercised when there are legislatively imposed provisos or conditions on an appropriation. The Holder case itself, however, cites no authority for a general proposition that a governor cannot veto a proviso or condition to an appropriation. It should be noted that, although the Mississippi Constitution is similar to the Wisconsin Constitution in that it provides that the governor may veto "parts" of an appropriation bill, another portion of the Mississippi Constitution, sec. 69, specifically provides that the legislature has the power to set conditions under which appropriated money is to be paid. This is a constitutional provision which has no counterpart in the Wisconsin Constitution. Sec. 69 may well justify in Holder the language in respect to "conditions," for in Mississippi the governor apparently may not veto a proviso or a condition to an appropriation. That concept, however, finds no support in the Wisconsin Constitution.

****555** We are satisfied that, had the Wisconsin court in Henry found that there was indeed a condition to the appropriation which had been vetoed by the governor, it would have been obliged to look to the rationale of Holder, and it would have concluded that that rationale, although arguably appropriate to Mississippi and its constitutional provisions, was inapplicable as a limitation *715 of the partial-veto power of the governor under the Wisconsin Constitution.

[5] The dicta, in reliance upon Holder, which appears in Henry and in subsequent Wisconsin cases, does not correctly state the Wisconsin law. Under the Wisconsin Constitution, the governor may exercise his partial-veto power by removing provisos and conditions to an appropriation so long as the net result of the partial veto is a complete, entire, and workable bill which the legislature itself could have passed in

the first instance.

Unlike the fact situation in *Henry*, the Acting Governor vetoed what is arguably a condition which the Legislature had placed on the appropriation. By so doing, he changed the policy of the law as envisaged by the Legislature. He caused the general fund to be charged with an obligation which the Legislature did not anticipate; and also, it is contended, he accelerated the effective date of the bill. These are policy changes, legislative in nature, which the Constitution authorized him to make.

The bill was an appropriation bill. What remained after the Governor's partial veto was a complete, entire, and workable bill. As such it was severable from the legislative package of the enrolled bill. The Acting Governor complied with the constitutional mandates by timely and appropriately messaging his objections to the house of the Legislature in which the bill originated. He made an appropriate return of the vetoed legislation as the Constitution contemplates it. We accordingly hold that Acting Governor Schreiber constitutionally exercised the power of partial veto as conferred upon governors of Wisconsin by art. V, sec. 10, of the Constitution.

Rights declared validating the partial vetoes exercised by the Governor pursuant to *716 art. V, sec. 10, Wisconsin Constitution, upon enrolled Assembly Bill 664, published as ch. 107, Laws of 1977. Relief requested by petitioners denied.

No questions concerning the validity of ch. 107, Laws of 1977, other than those relating to the approval, enactment, and publication thereof, are now determined.

CONNOR T. HANSEN, Justice (concurring in part, dissenting in part).

The majority of the court holds that Assembly Bill 664 was an appropriation bill and that, under the facts of this case, the partial veto should not be invalidated because the governor did not timely return the enrolled bill or the part partially vetoed to the assembly. I concur in the result reached by the majority on these issues.

However, I believe that a comment is appropriate

with regard to the procedures followed by governors in recent years when exercising their powers of partial veto. The parties have stipulated that neither the enrolled bill, nor the parts of the bill disapproved, nor the language of the parts approved, were delivered to the legislature by the governor in the present case. Instead, the governor submitted a veto message setting forth the fact that he had partially vetoed the bill and a letter stating his objections to the bill as enacted.

The fact is that the return of the governor to the legislature did not identify the exact wording objected to, nor was this wording made known to the legislature within the six days prescribed in art. V, sec. 10 of the Wisconsin Constitution for the return of the vetoed portions of the bill. Precise copies of the enrolled bill, showing the parts vetoed, were subsequently made available to the legislature as a result of informal procedures adopted by the Legislative Reference Bureau.

Affidavits and tabulations filed with this court in connection with this case show that the practice of previous *717 governors has not been consistent. The practice in the years immediately following creation of the partial**556 veto power was generally to return the enrolled bill to the originating house for review of the partial veto. The parties disagree as to the practice in succeeding years, but it is clear, from the information supplied by the parties, that the practice has varied, not only from one governor to the next, but from one veto to the next.

The absence of any formalized or consistent procedure has, in part, made this litigation necessary and is likely to contribute to future litigation. I am mindful that this court will not interfere with the internal procedures of the legislature. However, we are concerned here not only with the integrity of the legislative process itself, but also with the provisions of the constitution authorizing the exercise of the partial veto power.

Under these circumstances, I would deem it appropriate for this court to specify procedures for the return by a governor of the portions of a bill objected to. Since the court has declined to prescribe such procedures, it would be proper for the legislature to consider doing so, consistent with the opinion of the court.

I specifically note that recent governors have discontinued the practice, followed by certain of their predecessors, of setting forth verbatim the portions stricken from partially vetoed bills in their veto messages to the legislature.

Unofficial reproductions of the vetoed portions are available through the informal procedures of the Legislative Reference Bureau, and the legislature is not, as a practical matter, left in profound ignorance of the executive action. Nevertheless, under the present practice, the legislature is not timely provided with an official version of the bill as partially vetoed.

The dignity and integrity of the legislative process would be better served, and future litigation avoided, by *718 the establishment of procedures to guarantee at least a minimum of regularity in the return of a partial veto to the originating house.

"... (T)he extraordinary character and far reaching consequences of the act of veto are some indication of a necessity that it shall be exercised with a regularity and orderliness commensurate with its importance." Tuttle v. Boston, 215 Mass. 57, 60, 102 N.E. 350, 351 (1913).

I respectfully dissent from the holding of the majority that the power of partial veto, as exercised in this case, is a valid exercise of that authority.

In the Wisconsin Constitution, as in the federal constitution, the principle of separation of powers is nowhere expressly stated, but it is recognized as implicit in the provisions vesting the legislative, executive and judicial powers of the state in the respective branches of government. Our constitution provides for three branches of government, separate and coordinate, each supreme in its sphere and independent of the others. None may perform the functions or exercise the powers of another. This court has jealously guarded this concept, in the belief that an invasion of the province of one branch by another is an attack upon the constitutional foundation of the government itself, and in a sense, upon the liberty of our citizens. State ex rel. Broughton v. Zimmerman, 261 Wis. 398, 404, 405, 410, 411, 52 N.W.2d 903 (1952); Goodland v. Zimmerman, 243 Wis. 459, 466, 467, 10 N.W.2d 180 (1943); State ex rel. Rodd v. Verage, 177 Wis.

295, 322, 187 N.W. 830 (1922); In re Appointment of Revisor, 141 Wis. 592, 596, 124 N.W. 670 (1910).

Although there have developed between the several branches of government "great borderlands of powers" in which it is difficult to determine where the functions of one branch end and those of another begin, In re Appointment of Revisor, *supra*, at 597, 124 N.W. 670, it is nonetheless *719 the province and the duty of the judicial branch of government to mark the constitutional boundaries of each branch and to remedy invasions by one branch of the territory of another. State ex rel. Mueller v. Thompson, 149 Wis. 488, 137 N.W. 20 (1912).

Article IV, section 1, of our constitution provides that "The legislative power shall be vested in a senate and an assembly." The constitutional role of the governor in **557 the legislative process includes the power to convene special sessions of the legislature; to communicate with, and make recommendations to, the legislature; to direct the preparation of the financial budget; and to veto bills which have been passed by the legislature, art. V, secs. 4 and 10, Wisconsin Constitution, and sec. 16.46, Stats., State ex rel. Sundby v. Adamany, 71 Wis.2d 118, 131, 237 N.W.2d 910 (1976). Nevertheless, the fundamental concept of art. IV, sec. 1, is that the legislative power of this state is confided exclusively to the legislature. State ex rel. Broughton v. Zimmerman, *supra*, 261 Wis. at 405, 410, 52 N.W.2d 903; Goodland v. Zimmerman, *supra*, 243 Wis. at 467, 10 N.W.2d 180; In re Appointment of Revisor, *supra*, 141 Wis. at 597, 598, 124 N.W. 670; see: State ex rel. McCormack v. Foley, 18 Wis.2d 274, 277, 118 N.W.2d 211 (1962). Unless we are prepared to abandon that concept and I am not prepared to do so then there must be some palpable limit to the power of the governor to rewrite, by the device of the partial veto, bills which have passed the legislature.

In recent years, partial vetoes have not only increased greatly in number; they have been applied to ever smaller portions of bills. Several years ago, an attempt was made to exercise the power so as to strike the digit "2" from a \$25 million bonding authorization. Even this may not mark the limits of the use of the power. Advisors to a recent governor were repor-

ted to have considered striking the letter "t" from the word "thereafter" in order to alter the effective date of a liquor tax *720 increase. Only the limitations on one's imagination fix the outer limits of the exercise of the partial veto power by incision or deletion by a creative person. At some point this creative negative constitutes the enacting of legislation by one person, and at precisely that point the governor invades the exclusive power of the legislature to make laws.

Long before the advent of the partial veto, the father of the doctrine of separation of powers, Baron de Montesquieu, warned that liberty would be endangered if the executive were to have the power of ordaining laws by his own authority or of amending what had been ordained by others, and he urged that the executive should have no part in legislating other than the privilege of rejecting what had been enacted by the legislature.^[FN1] I believe Montesquieu was correct. In the scheme of our constitution, the governor is to review the laws and not to write them. He is not, by careful and ingenious deletions, to effectively "write with his eraser" and to devise new bills which will become law unless disapproved by two-thirds of the legislators who are elected by the people of the state.

^{FN1.} Montesquieu, *The Spirit of the Laws*, Vol. I, Book XI, Chapter 6 (Hafner, New York, 1966), 156, 159, 160.

In principle, this is clear enough. What gives pause to the majority, I suspect, is the difficulty of applying these principles to concrete cases, especially under the approach used by this court in *State ex rel. Sundby v. Adamany*, *supra*, and the majority in the instant case. This is so because the exercise of the partial veto power by the executive shades into the powers of the legislature. As the Sundby Case recognized, every veto has both an affirmative and a negative ring about it. Every veto necessarily works some change of policy, and in a sense partakes of legislating. Here lies the difficulty *721 the majority confronts in saying precisely where the proper sphere of the executive ends and that of the legislature begins.

The majority is rightfully wary of the elusive tests enunciated in some other jurisdictions. To hold that

the exercise of the partial veto power may not have an "affirmative," "positive" or "creative" effect on legislation, or that the veto may not change the "meaning" or "policy" of a bill, as some courts elsewhere have done, would be to involve this court in disingenuous semantic games. While these tests may be appealing in the abstract, they are unworkable in practice. Every veto may be perceived in affirmative or negative terms, and **558 as either conforming to or defying the general legislative intent, depending upon the observer's perspective. These tests are inescapably subjective. Without an objective point of reference, this court would be reduced to deciding cases upon its subjective assessment of the respective policies espoused by the legislature and the executive, an unseemly result which would foster uncertainty in the legislative process. More importantly, such a result would defeat its own purpose; the judicial department may no more assume the proper functions of the legislature, or interfere with their discharge, than may the governor.

Perhaps for this reason, the decisions of this court have steadily fashioned a standard which affords the governor virtually unlimited power to rework legislation by means of the partial veto. In the early cases of *State ex rel. Wisconsin Tel. Co. v. Henry*, 218 Wis. 302, 260 N.W. 486 (1935), and *State ex rel. Martin v. Zimmerman*, 233 Wis. 442, 289 N.W. 662 (1940), this court focused on the question whether the portions of a bill remaining after the exercise of the partial veto power provided a complete and workable law, but also required that the parts vetoed be severable, and implied, without *722 so holding, that parts which constituted conditions, contingencies, or provisos imposed by the legislature could not be severed. In the recent Sundby Case, *supra*, this court reiterated the limited requirement that the portions of the bill approved by the governor must provide a complete, workable law, and emphasized that the governor was free to change the policy of the bill as enacted by the legislature. Again, however, the court held open, without deciding, the possibility that portions of a bill which are contingencies, provisos, or conditions, might not be separable. Therefore, until the present case, this court, at least by dicta, has recognized that there must be some limitation on the exercise of the

partial veto by the governor.

The majority now jettisons the never-applied exception for "conditions, provisos and contingencies," and, for all practical purposes, any other limitation on the partial veto power. This step is no doubt logical and necessary for the majority to hold that, "The power of the Governor to disassemble the law is co-extensive with the power of the Legislature to assemble its provisions initially." When the court holds that a governor may freely alter the evident intent or policy of the legislature, it is no doubt consistent to permit him to remove conditions and contingencies, which, after all, are no more than manifestations of legislative policy or intent. However, this writer is unable to find language in art. V, sec. 10, to support such a sweeping construction of the partial veto power, nor has attention been directed to authorities in this state or any other state which would suggest that such was the intent of the 1930 constitutional amendment which created that power.

Having discarded the provisos-and-conditions exception, the majority holds that a partial veto of an appropriation bill is valid, provided only that "the net result . . . is a complete, entire, and workable bill which the *723 legislature itself could have passed in the first instance." In my opinion this court has gone too far and should retrace its steps. The standard approved today gives the governor wide, and for all practical purposes, unlimited, authority to exercise power reserved by the constitution to the legislature. In reality, the purported limitation that the remainder of any bill, after the exercise of a partial veto, must be a workable law, imposes little constraint upon such a usurpation of legislative power. It is difficult to envisage a governor deliberately exercising the partial veto power so as to produce a fragmentary or unworkable law.

Although in Sundby, supra, we held open the question whether a governor could alter an appropriation bill by striking a portion of an appropriation figure, the test stated by the majority affords no discernible basis for objection to such a veto, if the remainder of the bill is workable. Further, in the case before us, the legislature provided for the collection and disbursement of a voluntary payment by the taxpayer. By ex-

ercise of the partial veto power, the governor has **559 effectively increased an appropriation by producing a charge on the general fund of an estimated \$600,000 per annum.[FN2] Under the test pronounced by the majority it therefore becomes unobjectionable to increase an appropriation by the exercise of the partial veto power.

FN2. If the increased appropriation effected in this case is not apparent (the majority concludes that the governor's veto "left the appropriation untouched"), such a veto can readily be imagined. For example, a bill providing for appropriation of a fixed sum in "every other month" might be increased by striking the word "other."

Even more disturbingly, the standard adopted by the court poses no discernible obstacle to the use of deletions to produce a complete, entire and workable bill concerning a subject utterly unrelated to that of the bill as passed by the legislature. Might an appropriation for a *724 gubernatorial commission be transformed to provide the governor with a second salary? In all probability we will not soon face such a question, but the clear lesson of experience is that we ought not discount such ingenuity. I am unable to identify, in the majority opinion, even an implicit obstacle to such an abuse of the veto power. I fear that the court may now have painted itself into a corner, and that a time may come when we regret having done so.

The original purposes of the partial veto power, and the language of this court's early decisions defining that power, suggest an alternative solution, a solution that, in my opinion, would be consistent with the purposes of the partial veto power, provide a neutral benchmark from which the actions of the governor might be measured, and also preserve the prerogatives of the legislature.

The purpose of the partial veto power was described in State ex rel. Martin v. Zimmerman, supra, at 447, 448, 289 N.W. at 664:

"Art. V, sec. 10, of our state constitution is not ambiguous. As amended in 1930, it must be construed as a whole. In so construing it, we entertain no doubt

either as to the reason for, or the meaning of, the 1930 amendment . . . Its purpose was to prevent, if possible, the adoption of omnibus appropriation bills, logrolling, the practice of jumbling together in one act inconsistent subjects in order to force a passage by uniting minorities with different interests when the particular provisions could not pass on their separate merits, with riders of objectionable legislation attached to general appropriation bills in order to force the governor to veto the entire bill and thus stop the wheels of government or approve the obnoxious act. Very definite evils were inherent in the lawmaking processes in connection with appropriation measures. Both the legislature and the people deemed it advisable to confer power upon the governor to approve appropriation bills in whole or in part . . ."

The partial veto power was therefore directed toward the legislative practice of uniting in a single bill various *725 proposals, each of which would have constituted a complete and workable bill in itself.

Prior to the constitutional amendment, the improper joinder of such proposals prevented the governor from dealing separately with each "part" which would otherwise have constituted a separate proposal. The partial veto provisions gave the governor power to unpack omnibus appropriation bills, and to pass separately upon each of the constituent parts which, if not for the practice of jumbling bills together, would have been enacted individually, and would have constituted a complete, entire and workable bill.

The governor's power to dismantle an appropriations bill was made as extensive as the legislature's power to construct such a bill from independent proposals capable of separate enactment.

I believe this is what this court had in mind when, in the first case to consider the scope of the partial veto power, it described the power to be "coextensive as the legislature's power to join and enact separable pieces of legislation in an appropriation **560 bill." State ex rel. Wisconsin Tel. Co. v. Henry, supra, 218 Wis. at 315, 260 N.W. at 492. The court explained: ". . . As the legislature can do that in this state (join and enact separable pieces of legislation in a single bill), there are reasons why the Governor should have

a coextensive power of partial veto, to enable him to pass, in the exercise of his quasi-legislative function, on each separable piece of legislation or law on its own merits. That is not necessary in many states because they have constitutional provisions which prohibit the Legislature from passing a bill which contains more than one subject. Wisconsin, however, has no such prohibition except as to private and local bills (sec. 18, art. IV, Wis. Const.). As far as general legislation is concerned, the Legislature may, if it pleases, unite as many subjects in one bill as it chooses. Therefore, in order to check or prevent the evil consequences of improper joinder, so far, at least, as *726 appropriation bills are concerned, it may well have been deemed necessary, in the interest of good government, to confer upon the Governor, as was done by the amendment in 1930 of sec. 10, art. V, Wisconsin Constitution, the right to pass independently on every separable piece of legislation in an appropriation bill." State ex rel. Wisconsin Tel. Co. v. Henry, supra, at 315, 260 N.W. at 492. (Emphasis added.)

This, in my opinion, is an accurate statement of the purposes and nature of the partial veto power of the governor. The power thus conferred is not a power to reduce a bill to its single phrases, words, letters, digits and punctuation marks. Rather the partial veto power should be exercised only as to the individual components, capable of separate enactment, which have been joined together by the legislature in an appropriation bill. That is, the portions stricken must be able to stand as a complete and workable bill.

Also, as stated by the majority, the portions of a bill approved by the governor must constitute a complete, entire, and workable law. However, I do not consider this "limitation" to say anything which is not implicitly true of every legislative enactment. Any enactment, whether passed by the legislature and approved by the governor, or created by use of the partial veto power, will fail if it is fragmentary, patently incomplete, or incapable of execution.

The approach here set forth would effectively define the limits of the constitutional role of the governor. He would be able to veto independent elements of multi-subject appropriation bills, and would in most

cases be unable to effectively add elements to the bills enacted by the legislature. His veto would be directed to portions of an appropriation bill which were grammatically and structurally distinct, and he would not be able to deal individually with numbers or words, or single digits or letters.

*727 Equally important, this standard would be capable of even-handed and predictable application, and this court would not be required to mediate policy disagreements between the two other coordinate branches of our government. Most important, this approach would protect the prerogatives reserved to the legislature by the constitution and would fulfill the responsibility of this court to determine when the exclusive territory of one of our independent branches has been invaded by another.

It appears that we have now arrived at a stage where one person can design his own legislation from the appropriation bills submitted to him after they have been approved by the majority of the legislature. The laws thus designed by one person become the law of the sovereign State of Wisconsin unless disapproved by two-thirds of the legislators. I am not persuaded that art. V, sec. 10, was ever intended to produce such a result.

There can be no question that the partial vetoes presently before the court do not meet the standard herein set forth. The governor partially vetoed section 51 of the bill as passed by the legislature by striking the words "that their income tax liability be increased," by and the words "deposit into." There is no method by which these portions **561 can be said to constitute an independent legislative proposal capable of separate enactment, and I would therefore hold that the governor has exceeded the limits of the power conferred upon him by the partial veto provision, and has improperly assumed power reserved to the legislature.

Wis. 1978.

State ex rel. Kleczka v. Conta

82 Wis.2d 679, 264 N.W.2d 539

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THE WISCONSIN PARTIAL VETO:
PAST, PRESENT AND FUTURE

by

Mary E. Burke

WI law rev.v.1989,no.6

COMMENTS

THE WISCONSIN PARTIAL VETO: PAST, PRESENT AND FUTURE

A 1930 amendment to the Wisconsin Constitution authorized state governors to veto "parts" of appropriation bills. Since then, litigation, attempted constitutional amendments efforts and opinions issued by the state attorney general have attempted to define, expand, or restrict the scope of the partial veto authority.

In 1988, the Wisconsin Supreme Court affirmed the authority of Wisconsin governors to veto "parts" of appropriation bills as small as single digits and individual letters. The Wisconsin Legislature subsequently authorized another state constitutional amendment prohibiting the partial veto of individual letters. Wisconsin voters ratified that amendment in the April 1990 statewide general election.

This Comment examines the history of the Wisconsin partial veto as it developed in case law and administrative interpretation. The Comment argues that the sweeping partial veto power approved by the Wisconsin Supreme Court in 1988 conflicts with separation of powers principles and that this conflict is complicated by partisan and political concerns. The Comment approves of voter ratification of the 1990 partial veto amendment and recommends further action to define and restrict the partial veto authority.

On July 31, 1987, Wisconsin Governor Tommy G. Thompson approved the 1987-89 biennial state budget.¹ Before returning the budget bill to the state legislature, Governor Thompson vetoed 290 separate "parts" of the bill.² The number³ and variety⁴ of Governor Thompson's

1. Act of July 31, 1987, 1987 Wis. Act 27, 1987 Wis. Laws 69.

2. Wis. CONST. art. V, § 10 provides that "[a]ppropriation bills may be approved in whole or in part by the governor, and the part approved of shall become law, and the part objected to shall be returned in the same manner as provided for other bills."

3. In 1930, the Wisconsin Constitution was amended to allow the governor to veto appropriation legislation partially. See *infra* notes 29-30 and accompanying text. The list below shows the number of bills partially vetoed per legislative session from the inception of the partial veto power until the 1987-89 legislative session:

1931: biennial session (2)	1961: biennial session (3)	1979: biennial session (9)
1933: biennial session (1)	1963: biennial session (1)	1981: biennial session (10)
1935: biennial session (4)	1965: biennial session (4)	1981: special session (1)
1937: special session (1)	1967: biennial session (5)	1982: special session (1)
1939: biennial session (4)	1969: biennial session (11)	1983: biennial session (8)
1941: biennial session (1)	1971: biennial session (8)	1983: special session (3)
1943: biennial session (1)	1973: biennial session (14)	1985: biennial session (4)
1945: biennial session (2)	1973: special session (1)	1985: special session (2)
1947: biennial session (1)	1974: special session (3)	1986: special session (1)
1949: biennial session (2)	1975: biennial session (21)	1987: biennial session (18)
1953: biennial session (4)	1976: special session (1)	1987: special session (2)
1957: biennial session (3)	1977: biennial session (13)	
1959: biennial session (1)	1977: special session (2)	

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1987-89 budget bill partial vetoes were unprecedented in Wisconsin gubernatorial history.

Governor Thompson's partial vetoes dramatically altered legislative policy and appropriation decisions incorporated in the budget bill.⁵ For example, one section of the budget bill would have created a statutory provision allowing courts to detain for "not more than 48 hours" any juvenile violating a delinquency proceeding court order.⁶ Governor Thompson vetoed the term "48 hours" and creatively substituted "ten days" by vetoing individual letters and words from another sentence in that section.⁷ The governor also vetoed single digits from appropriation amounts; the state Arts Board's appropriation was reduced from \$750,000 to \$75,000 by vetoing a "0."⁸

Partisan politics influenced the legislative reaction to Governor Thompson's budget vetoes. Governor Thompson, a Republican, faced off against the Democrat-controlled Wisconsin Legislature. In September 1987, Democratic legislators attempted to override some of the governor's budget vetoes; however, a united minority in the Wisconsin Senate stymied the override effort.⁹

Members of the Legislature's Joint Committee on Legislative Organization (JCLO)¹⁰ earlier had filed an original action in the Wisconsin

WISCONSIN LEGISLATIVE REFERENCE BUREAU, THE PARTIAL VETO—AN UPDATE, INFORMATIONAL BULLETIN 8 (1988) [hereinafter THE PARTIAL VETO IN WISCONSIN].

4. Subsequent litigation challenged six "creative" types of vetoes executed by Governor Thompson: vetoes of individual digits, vetoes of letters and parts of words, vetoes of isolated parts of different subunits, vetoes creating ungrammatical or incomprehensible text, vetoes changing "repeal and recreate" to "repeal," and vetoes impounding appropriations. Petitioners' Brief at 4-8, *State ex rel. Wisconsin Senate v. Thompson*, 144 Wis. 2d 429, 424 N.W.2d 385 (1988) (No. 87-1750-OA).

5. Since 1930, the Wisconsin state budget has been enacted in omnibus budget bills containing both appropriations and policy initiatives.

6. S.B. 100, 1987-1988 Wis. Legis., § 880y (1987).

7. Appendix of Petitioner's Brief, *Petition for Leave to Commence an Original Action* at 9-10, *State ex rel. Wisconsin Senate v. Thompson*, 144 Wis. 2d 429, 424 N.W.2d 385 (1988) (No. 87-1750-OA) [hereinafter *Petition*].

8. S.B. 100, 1987-1988 Wis. Legis., § 132 (1987).

9. Wis. CONST. art. V, § 10 provides that a gubernatorial veto can be overridden by the votes of two-thirds of the members of both houses of the Wisconsin Legislature. Thirty-three members compose the Wisconsin Senate; 99 members compose the Wisconsin Assembly. Thus, as few as 12 senators can prevent override of a gubernatorial veto.

In September 1987, the state Senate attempted to override 26 of the budget bill partial vetoes executed by Governor Thompson. All override attempts failed; the votes to override individual partial vetoes ranged from 19 in favor of override and 14 against, to 14 in favor of override and 19 against. BULLETIN OF THE PROCEEDINGS OF THE WISCONSIN LEGISLATURE, 1987-88 SESS., at 52 (Dec. 31, 1988).

10. JCLO is a permanent joint legislative committee consisting of 10 members: the president of the Senate; the speaker of the Assembly; and the majority, minority, assistant majority, and assistant minority leaders of both houses. WISCONSIN DEPT. OF ADMINISTRATION, WISCONSIN BLUE BOOK 399 (1989). JCLO designates the Legislature's representatives in any declaratory judgment action. WIS. STAT. § 13.90(2) (1987-1988).

Supreme Court, seeking judicial review of the governor's partial vetoes. The JCLO lawsuit alleged that Governor Thompson had improperly vetoed digits, letters and parts of words¹¹ and sought a declaratory judgment finding that the governor had unconstitutionally exercised his partial veto authority. In June 1988, the Wisconsin Supreme Court sustained Governor Thompson's partial vetoes in *State ex rel. Wisconsin Senate v. Thompson*.¹²

On June 30, 1988, Democratic leaders convened a one-day special session of the Wisconsin Legislature. The assembled legislators gave first consideration to a state constitutional amendment that would limit gubernatorial partial veto authority by prohibiting individual letter vetoes.¹³ The amendment passed by wide margins in both the Senate and the Assembly.¹⁴

The partial veto amendment was reintroduced for second consideration by the new legislature that convened in January 1989.¹⁵ The Senate quickly reapproved the amendment.¹⁶ The Assembly held the amendment in its Rules Committee until the end of October, when it was placed on the Assembly calendar and approved by the full Assembly.¹⁷ The amendment then appeared on the April 1990 statewide ballot¹⁸ and was ratified by Wisconsin voters.¹⁹

11. Petition at 2, *State ex rel. Wisconsin Senate v. Thompson*, 144 Wis. 2d 429, 424 N.W.2d 385 (1988) (No. 87-1750-OA).

12. *State ex rel. Wisconsin Senate v. Thompson*, 144 Wis. 2d 429, 424 N.W.2d 385 (1988).

13. Wis. CONST. art. XII, § 1 provides:

Any amendment . . . to this constitution may be proposed in either house of the legislature, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment . . . shall be entered on their journals, . . . and referred to the legislature to be chosen at the next general election . . . and if, in the legislature so next chosen, such proposed amendment . . . shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the legislature to submit such proposed amendment . . . to the people in such manner and at such time as the legislature shall prescribe; and if the people shall approve and ratify such amendment . . . by a majority of the electors voting thereon, such amendment . . . shall become part of the constitution.

14. Enrolled Jt. Res. 76, 1987-1988 Wis. Legis., 1987 Wis. Laws 2180. The amendment would modify article V, section 10 of the Wisconsin Constitution by adding: "In approving an appropriation bill in part, the governor may not create a new word by rejecting individual letters in the words of the enrolled bill." The vote in the Senate was 18 in favor of the amendment and 14 opposed; the vote in the Assembly was 55 in favor of the amendment and 35 opposed.

15. The proposed amendment was reintroduced as 1989 Wisconsin Assembly Joint Resolution 7 and 1989 Wisconsin Senate Joint Resolution 11.

16. The Senate adopted the amendment on January 26, 1989 by a vote of 22 in favor and 11 opposed. BULLETIN OF THE PROCEEDINGS OF THE WISCONSIN LEGISLATURE, 1989-90 Sess., at 84 (Jan. 6, 1990).

17. Sixty-four Assembly members voted in favor of the proposed amendment, 32 members voted against the proposed amendment, and two members paired to cancel each other's vote. BULLETIN OF THE PROCEEDINGS OF THE WISCONSIN LEGISLATURE, 1989-90 Sess., at 75 (Nov. 4, 1989). The Assembly also approved a technical amendment to the

The recent partial veto amendment is the latest skirmish between the executive and legislative branches of Wisconsin state government over use of the partial veto and control of the state appropriations process. This Comment explores past, present and future partial veto disputes between Wisconsin governors and the Wisconsin legislature. In Part I, the Comment reviews past delineation and application of Wisconsin's partial veto authority.²⁰ The status of Wisconsin partial veto authority is deeply rooted in historic textual analysis and policy interpretation. Part II analyzes the present expansive partial veto power, as affirmed by *Wisconsin Senate*.²¹ Part III examines the aftermath of *Wisconsin Senate* and discusses future partial veto alternatives. The Comment suggests that the partial veto authority permitted by *Wisconsin Senate* is too broad and applauds the April 1990 partial veto amendment. Ultimately, the Comment recommends further restriction of the Wisconsin partial veto authority.

I. THE PAST: HISTORY OF WISCONSIN'S PARTIAL VETO

In 1930, Wisconsin voters amended the state constitution to authorize gubernatorial partial veto of appropriation bills.²² Since that time, interested parties have attempted to restrict, define, or eliminate the partial veto. On six occasions, the legality of particular partial vetoes has been challenged in the Wisconsin Supreme Court. The state attorney general's office has been asked for numerous legal opinions on partial veto questions. State constitutional amendments, designed to modify existing partial veto authority, have been introduced in the

proposed amendment, changing "1989" to "1990" where appropriate in the text of the proposed amendment. *Id.*; Assembly Am. 1 to S.J.R. 11, 1989-1990 Wis. Legis. (1989).

18. S.J.R. 11, 1989-1990 Wis. Legis. (1989). See also A.J.R. 7, 1989-1990 Wis. Legis. (1989).

19. The amendment was ratified with about 62% of the voters voting for the amendment. Wis. St. J., Apr. 4, 1990, at 3A, col. 1.

20. On six occasions, the Wisconsin Supreme Court has considered the extent of the partial veto power conferred on Wisconsin governors by Wis. CONST. art. V, § 10. See *State ex rel. Wisconsin Telephone Co. v. Henry*, 218 Wis. 302, 260 N.W. 486 (1935); *State ex rel. Finnegan v. Dammann*, 220 Wis. 143, 264 N.W. 622 (1936); *State ex rel. Martin v. Zimmerman*, 233 Wis. 442, 289 N.W. 662 (1940); *State ex rel. Sundby v. Adamany*, 71 Wis. 2d 118, 237 N.W.2d 910 (1976); *State ex rel. Kleczka v. Conta*, 82 Wis. 2d 679, 264 N.W.2d 539 (1978); *State ex rel. Wisconsin Senate v. Thompson*, 144 Wis. 2d 429, 424 N.W.2d 385 (1988). For a more detailed discussion of *Henry*, *Martin*, and *Sundby*, see Harrington, *The Propriety of the Negative—The Governor's Partial Veto Authority*, 60 MARQ. L. REV. 865 (1977).

21. See *supra* note 12.

22. Wisconsin voters ratified the partial veto amendment at the 1930 general election, following legislative passage of the proposed amendment as Enrolled Jt. Res. 37, 1927-1928 Wis. Legis., 1927 Wis. Laws 986, and Enrolled Jt. Res. 43, 1929-30 Wis. Legis., 1929 Wis. Laws 1079.

Wisconsin legislature. The history of these diverse yet interrelated efforts documents the evolution of Wisconsin's partial veto authority.

A. Constitutional Authorization

Before the 1930 partial veto amendment,²³ a Wisconsin governor possessed the same veto authority over any bill, regardless of content. That is, the governor could veto the entire bill. The governor's total veto power over appropriation bills lost much of its utility when the Wisconsin legislature began adopting omnibus appropriation bills²⁴ in the 1911 legislative session.²⁵ Earlier state budgets had been enacted as a series of agency appropriation bills, permitting a governor to veto individual appropriations by vetoing individual bills. By contrast, packaging multiple budget and policy items together in an omnibus appropriations bill forced a governor into an "all or nothing" appropriation veto situation. By 1913, Governor Francis E. McGovern had publicly decried decreased gubernatorial veto power resulting from omnibus state budgets.²⁶ Governor McGovern also lamented the consequent intragovernmental power balance.²⁷

23. See *supra* note 22.

24. An omnibus appropriation bill contains appropriation items and substantive legislation for multiple programs and initiatives.

25. THE PARTIAL VETO IN WISCONSIN, *supra* note 3, at 2.

26. On August 7, 1913, Governor McGovern delivered a special message concerning the appropriations process and the partial veto power. Addressing the Wisconsin Legislature, the Governor stated:

[T]he significant result of the change (to omnibus appropriation bills) has been to practically nullify the executive veto with respect to all financial measures. As these bills have come to me during the closing days of this session there are many items in them that meet my approval; a number I should like to see reduced in amount; and others I should prefer to veto altogether if I had the power. But no chance to do this or to separate the good from the bad was given me. . . . The only alternative presented therefore was to sign these bills, defective in a number of particulars as I regarded them, or to veto them as a whole, thus rejecting what I had approved as well as what I had disapproved.

Id.

27. In Governor McGovern's opinion, it was clear that under the budget plan of appropriating money the executive department no longer exercises the influence or power it once had or was intended by the constitution to possess. It seems to me therefore something should be done to restore matters to the equilibrium of power and responsibility that has always existed between the executive and legislative branches of government in respect to these matters. With the introduction of the budget system and the framing of money bills as omnibus measures, authority should be conferred upon the governor that he does not now possess. . . . Otherwise, he cannot fairly be held responsible for appropriation measures. Under the method of legislation pursued at this session he now has in fact practically nothing to say about what shall go into appropriation bills or be kept out of them. But nothing more deeply concerns the people of the state than the appropriation of public money and the imposition of taxes; and to no state officer do they more quickly and properly turn for explanation when expenditures and taxes are high than to the governor.

Id.

A constitutional amendment, proposed in the 1925 legislative session, would have permitted a Wisconsin governor to "disapprove or reduce items or parts of items in any bill appropriating money."²⁸ Neither the Senate nor the Assembly passed the proposed amendment. A less permissive amendment, proposed in the 1927 legislative session, permitted a Wisconsin governor to veto "parts" of appropriation bills.²⁹ Both the 1927 Legislature and the 1929 Legislature passed the latter amendment, which was placed on the November 1930 general election ballot for voter ratification.³⁰

However, controversy embroiled the Wisconsin partial veto authority even before the 1930 constitutional amendment received voter ratification. The 1929 Legislature enacted comprehensive budget reform legislation requiring that the governor submit a single budget bill.³¹ Partial veto proponents argued that the budget reform conferred too much power on the legislature. Therefore, proponents claimed that the partial veto amendment was necessary to prevent the legislature from embarrassing the governor by increasing individual appropriation items in the budget bill. According to one proponent, the amendment restored the governor and the legislature to the balance intended by the constitution: "[t]he legislature holds the purse strings but cannot play politics and the governor is given a genuine veto power but . . . cannot dictate appropriations."³²

Partial veto opponents, including gubernatorial candidate Phillip La Follette, feared that passage of the amendment would create a "dictatorship" of centralized executive power.³³ Wisconsin voters, however, rejected La Follette's fears and ratified the partial veto amendment by a wide margin in the November 30 general election.³⁴ Consequently, the partial veto provisions of article V, section 10, were added to the Wisconsin Constitution.³⁵

28. S.J.R. 23, 1925-1926 Wis. Legis. (1925).

29. S.J.R. 35, 1927-1928 Wis. Legis. (1927).

30. The partial veto amendment was approved by a statewide popular vote of 252,655 in favor of the amendment and 153,703 opposed. *THE PARTIAL VETO IN WISCONSIN*, *supra* note 3, at 3.

31. Act of May 17, 1929, Ch. 97, Laws of 1929, 1929 Wis. Laws 95. Increased efficiency and economy of state government motivated the budget reform legislation, which also created the state budget bureau.

32. Senator Thomas Duncan, quoted in *THE PARTIAL VETO IN WISCONSIN*, *supra* note 3, at 3.

33. *THE PARTIAL VETO IN WISCONSIN*, *supra* note 3, at 3. La Follette utilized the newly approved partial veto power after winning the 1930 gubernatorial election, however. *Id.* at 4.

34. *See supra* note 30.

35. *See supra* note 2.

B. Early Textual Interpretation

On six occasions, the Wisconsin Supreme Court has interpreted ambiguities in the constitutional partial veto authorization.³⁶ In 1935, the court first addressed partial veto issues with a unanimous decision in *State ex rel. Wisconsin Telephone Co. v. Henry*.³⁷ The Wisconsin Legislature had enacted an emergency relief bill to raise and distribute money to thousands of poverty-stricken, unemployed state residents.³⁸ To raise revenue for the relief efforts, the nine-section bill included six sections providing authority to impose emergency income taxes. Another section of the bill appropriated funds for relief efforts and specified how the funds were to be distributed. Two other sections stated legislative intent. Governor La Follette, when presented with the bill, vetoed the legislative intent sections and the distribution subsections of the appropriation section.

The Wisconsin Telephone Company (the Company), a taxpayer, brought an original action in the state supreme court to challenge the resulting law.³⁹ The Company alleged that the governor's partial veto authority did not permit approving an appropriation if a proviso or condition inseparably connected to the appropriation was vetoed. The Company also alleged that the governor could not veto parts of an appropriation bill that were not themselves appropriations.⁴⁰

The court, in an opinion authored by Justice Fritz, upheld Governor La Follette's vetoes. The court did not reach the validity of vetoing inseparable provisos.⁴¹ Instead, the court found that the vetoed

36. See *supra* note 20.

37. 218 Wis. 302, 260 N.W. 486 (1935).

38. Act of Mar. 27, 1935, Ch. 15, Laws of 1935, 1935 Wis. Laws 19.

39. The *Henry* defendants were Robert K. Henry, State Treasurer; Theodore Dammann, Secretary of State; and James E. Finnegan, Attorney General. The prayer for relief sought a declaratory judgment that the bill was not lawfully enacted; or, if the bill was lawfully enacted, it was not lawfully published; or, if the bill was lawfully enacted and published, it was unconstitutional. *Henry*, 218 Wis. at 303, 260 N.W. at 487.

40. *Id.* at 304, 260 N.W. at 488.

41. *Henry* might have been resolved differently if inseparable provisions had been vetoed. According to the court, if inseparable provisions had been at issue, "the decision in *State ex rel. Teachers & Officers v. Holder*, 76 Miss. 158, 23 So. 643, would afford support for the [Company's] contention." *Id.* at 309-10, 260 N.W. at 490. Miss. CONST. § 73 provided that "[t]he governor may veto parts of any appropriation bill, and approve parts of the same and the portions approved shall be law." *Holder* arose when the Mississippi governor vetoed sections of a bill passed by the Mississippi legislature to appropriate funds for the state Industrial Institute and College. The *Holder* court, invalidating the governor's veto, held:

To allow a single bill, entire, inseparable, relating to one thing, containing several provisions, all complementary of each other, and constituting one whole, to be picked to pieces, and some of the pieces approved, and others vetoed, is to divide the indivisible; to make of one, several; to distort and pervert legislative action and by veto make a two-thirds vote necessary to preserve what a majority passed, allowable as to the entire bill, but inapplicable to a unit composed of divers complimentary parts, the whole passed because of each.

Holder, 76 Miss. at 182, 23 So. at 645.

distribution provisions were not inseparably connected to the approved appropriations measures.⁴² In reaching that conclusion, the court announced several principles that have fundamentally shaped the evolution of Wisconsin partial veto authority:

First, the court defined the "parts" of appropriation bills subject to partial veto as "inseparable pieces" of those bills.⁴³ The court reasoned that the framers of the 1930 amendment had chosen the word "part" to define the extent of the partial veto power.⁴⁴ Choice of the word "part," the court concluded, constituted an implicit rejection of the "item" veto language commonly found in the partial veto provisions of other states.⁴⁵ Furthermore, the court opined, the word "part" was unambiguous. To illustrate its conclusion that "part" had a "usual, customary, and accepted meaning,"⁴⁶ the court provided a contemporary dictionary definition:

One of the portions, equal or unequal, into which anything is divided, or regarded as divided, something less than a whole; a number, quantity, mass, or the like, regarded as going to make up, with others or another, a larger number, quantity, mass, etc., whether actually separate or not; a piece, fragment, fraction, member or constituent.⁴⁷

Closely examining the language of the partial veto amendment, the court found no indication that the governor's power to veto was not intended to mirror the legislature's power to "join and enact sep-

42. *Henry*, 218 Wis. at 309, 260 N.W. at 490.

43. *Id.* at 315, 260 N.W. at 492.

44. Some evidence disputes deliberate choice of the word "part" in framing the partial veto amendment. The drafting record for 1927 Wisconsin Senate Joint Resolution 35, which proposed the partial veto amendment, discloses that Senator William Titus had requested a joint resolution allowing the governor to veto "items" in appropriation bills. The drafting record does not indicate why the word "part" was incorporated in the joint resolution. WISCONSIN LEGISLATIVE REFERENCE BUREAU, CONSTITUTIONAL AMENDMENTS GIVEN "FIRST CONSIDERATION" APPROVAL BY THE 1987 WISCONSIN LEGISLATURE (1989).

According to Dr. H. Rupert Theobald, current Chief of the Legislative Reference Bureau serving the Wisconsin Legislature, no one knows why "part" was used instead of "item" in the 1930 partial veto amendment. Dr. Theobald notes that the unsuccessful partial veto amendment introduced in the 1925 Legislature had used the word "item," and that the same legislative drafter wrote both that unsuccessful amendment and the 1930 partial veto amendment. Interview with Dr. H. Rupert Theobald, Chief of the Legislative Reference Bureau, in Madison, Wisconsin (Apr. 6, 1989).

45. *Henry*, 218 Wis. at 310-13, 260 N.W. at 490-91. The court distinguished judicial interpretations of other state's partial veto provisions, because of differences in partial veto authorization language and differences in the nature of challenged vetoes. In fact, several other states constitutionally authorize their governors to veto parts of appropriation bills. See, e.g., KY. CONST. § 88; MISS. CONST. art. 4, § 73; N.M. CONST. art. IV, § 22; N.D. CONST. art V, § 10; WYO. CONST. art. 4, § 9.

46. *Henry*, 218 Wis. at 313, 260 N.W. at 491.

47. *Id.* at 313, 260 N.W. at 491 (quoting WEBSTER'S NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE 1781 (2d ed. 1934)).

arable pieces of legislation.”⁴⁸ Finding that the governor possessed a “quasi-legislative function,” the court reasoned that good governmental principles should permit the governor to pass independently on each separable piece of legislation.⁴⁹ The vetoed relief distribution and legislative intent provisions of the emergency relief act did not themselves contain appropriations but did constitute separable pieces of legislation. Thus, the *Henry* court established a test that profoundly shaped the future of Wisconsin partial veto authority by ruling that the approved parts of the emergency relief law constituted a “complete, entire, and workable law.”⁵⁰

The *Henry* court engaged in a textual analysis centering on legislative history and common definitions of the word “part.” The court’s textual analysis established that the veto of a “part” of an appropriation bill, or a “partial veto,” was not necessarily an “item” veto. Later partial veto challenges retain the textual analytic approach utilized in *Henry*. *Henry*, however, evaluated gubernatorial veto of large “parts”: sections and subsections of a legislative bill. To the *Henry* court, a large “part” had an unambiguous meaning. Later litigation concerned the partial veto of ever smaller “parts” of legislative bills. The *Henry* opinion does not reflect the court’s anticipation that its textual analysis eventually would be applied to individual digits and letters,⁵¹ or that the meaning of a “part” itself would become completely ambiguous.

The *Henry* court established three key principles for later partial veto interpretation. First, the state constitution permitted the partial veto of “separable” pieces of legislation.⁵² Second, a complete, entire and workable law must remain after partial vetoes are executed.⁵³ Finally, a Wisconsin governor performs “quasi-legislative” functions.⁵⁴ These three principles repeatedly reappear in subsequent partial veto analysis.

Henry was the first judicial attempt to limit the Wisconsin partial veto authority. The first legislative attempt to limit the partial veto authority occurred in the same year, when state legislators proposed limiting the governor’s partial veto authority to “appropriation items.”⁵⁵ The proposal, however, failed to pass either the Assembly or the Senate.

In 1936, exercise of the partial veto again provoked judicial review. *State ex rel. Finnegan v. Dammann*⁵⁶ raised the question of what con-

48. *Henry*, 218 Wis. at 315, 260 N.W. at 492.

49. *Id.*

50. *Id.* at 314, 260 N.W. at 491-92.

51. See *infra* notes 171-93 and accompanying text.

52. See *supra* note 48 and accompanying text.

53. See *supra* note 50 and accompanying text.

54. See *supra* note 49 and accompanying text.

55. A.J.R. 130, 1935-1936 Wis. Legis. (1935).

56. 220 Wis. 143, 264 N.W. 622 (1936). Attorney General Finnegan filed this original

stituted an "appropriation bill" subject to the governor's partial veto authority. In *Finnegan*, the court considered whether legislation regulating the payment of motor carrier fees⁵⁷ constituted an appropriation bill. The legislation specified that the motor carrier fees collected were to be paid into the state treasury and reappropriated through a revolving fund—governed by another section of the statutes.⁵⁸ Governor La Follette had vetoed two paragraphs of the bill, instigating the partial veto review.

Exploring the outer limits of the partial veto authority, the *Finnegan* court conceded that the revenue-raising motor carrier legislation contained no express appropriation. In an opinion by Justice Wickhem, the court noted that the partial veto authority applied to appropriation bills.⁵⁹ The court acknowledged that revolving fund appropriations impaired the governor's ability to reach objectionable appropriations.⁶⁰

The court, however, reasoned that expanding the definition of an "appropriation bill" to include a revenue raising bill would "extend the [partial veto authority] far beyond the evils it was designed to correct."⁶¹ Because the motor carrier bill was a revenue-raising bill, the court held that Governor La Follette possessed no authority to veto the bill partially.⁶²

In *Finnegan*, the court again applied a textual analysis to evaluate gubernatorial partial veto authority. The court's textual analysis of the meaning of "appropriation bill" restricted partial veto authority and indicated that the authority was intended to balance power between the governor and the legislature. *Finnegan* demonstrated that some limits could and would be applied to the partial veto authority.

In 1940, the governor's authority to change legislative policy through exercise of the partial veto authority was litigated in *State ex rel. Martin v. Zimmerman*.⁶³ *Martin* culminated a chain of events

action against Secretary of State Dammann, seeking a writ of mandamus ordering the Secretary to publish the approved parts of a bill vetoed in part by Governor La Follette. In Wisconsin, the attorney general and the secretary of state are elected officials. Wis. CONST. art VI, § 1.

57. Act of Oct. 4, 1935, Ch. 546, Laws of 1935, 1935 Wis. Laws 1076.

58. Wis. STAT. § 194.04(1)(bd),(cb) (1935).

59. *Finnegan*, 220 Wis. at 148, 264 N.W. at 624.

60. *Id.* at 148-49, 264 N.W. at 624.

61. *Id.* at 148, 264 N.W. at 624. Cf. 59 Op. Att'y Gen. of Wis. 94 (1970), in which Attorney General Warren advised that a bill could be distinguished from the *Finnegan* bill if it: (1) bore directly on appropriation of public monies by amending statutory sections containing sum sufficient appropriations; (2) showed on its face that salaries were to be raised; (3) expressly referred to the statutes containing the sum sufficient appropriation; and (4) specified payment by the state treasurer of some monies. Thus, the attorney general advised that the governor's partial veto of a bill amending statutory sections to raise judicial salaries was valid.

62. *Finnegan*, 220 Wis. at 149, 264 N.W. at 624.

63. 233 Wis. 442, 289 N.W. 662 (1940).

which began when the legislature enacted a bill changing the amount of state funds appropriated as aid for dependent children.⁶⁴ After the legislature had adjourned sine die,⁶⁵ Governor Julius Heil vetoed parts of the bill and forwarded the approved parts to Secretary of State Zimmerman for publication.

Secretary Zimmerman claimed that the proposed law was invalid for both procedural and substantive reasons. Procedurally, the Secretary reasoned that because the legislature had adjourned, the governor had not complied with a constitutional requirement that the vetoed bill be returned to the legislature.⁶⁶ The Secretary alleged that substantively the governor's vetoes unconstitutionally altered legislative policy. Citing these reasons, Secretary Zimmerman refused to publish the law so that it could go into effect.⁶⁷

In an opinion by Justice Martin, the court upheld the validity of the law on related textual and policy grounds. The court found that the partial veto language of the constitution was unambiguous and had to be read as a whole.⁶⁸ Thus, the court held that only vetoed portions of an appropriation bill, rather than the entire bill, must be returned by the governor to the legislature for reconsideration.⁶⁹

On this procedural point, the court reinforced its textual analysis with policy reasoning. According to the court, separation of powers principles prohibited the legislature from limiting the time the governor had to act on the bill. By adjourning, the legislature had forfeited its right to reconsider vetoed portions of the bill.⁷⁰ The 1930 partial veto amendment figured in the court's analysis, because:

Its purpose was to prevent, if possible, the adoption of omnibus appropriation bills, logrolling, the practice of jumbling together in one act inconsistent subjects in order to force a passage by uniting minorities with different interests when the particular provisions could not pass on their separate merits, with riders of objectionable legislation attached to general ap-

64. Act of Nov. 18, 1939, Ch. 533, Laws of 1939, 1939 Wis. Laws 926.

65. The legislature adjourns "sine die" when it does not specify before adjourning a date on which members will reconvene.

66. Wis. CONST. art. V, § 10. Besides the partial veto authorization, this section also provides:

If any bill shall not be returned by the governor within six days (Sundays excepted) after it shall have been presented to [the governor], the same shall be a law unless the legislature shall, by their adjournment, prevent its return, in which case it shall not be a law.

67. On the governor's behalf, Attorney General Martin sought a declaratory judgment affirming that the bill, as vetoed by the governor, had become a valid law. *Martin*, 233 Wis. at 443, 289 N.W. at 662.

68. *Martin*, 233 Wis. at 447, 289 N.W. at 664.

69. *Id.* at 449-50, 289 N.W. at 665.

70. *Id.* at 449, 289 N.W. at 665.

appropriation bills in order to force the governor to veto the entire bill and thus stop the wheels of government or approve the obnoxious act.⁷¹

Consequently, requiring the return of the approved portions of an appropriation bill, instead of just the vetoed portions, would have destroyed the entire purpose of the 1930 amendment.⁷²

Substantively, Secretary Zimmerman also had alleged that Governor Heil's vetoes changed enacted legislative policy so dramatically that the remaining bill did not provide a complete, workable law. The court conceded that the governor's partial vetoes changed the policy enacted by the legislature.⁷³ The court, however, recalled that the partial vetoes upheld in *Henry*⁷⁴ also had produced policy changes by affecting the distribution of relief monies. Applying the same test utilized by the *Henry* court—whether the approved parts of a partially vetoed bill, taken as a whole, comprised a complete, workable law—the *Martin* court upheld Governor Heil's partial vetoes and gave effect to the remaining law.⁷⁵

In *Martin*, the court continued the textual analysis of the partial veto authority initiated by the *Henry* court. Like *Henry*, *Martin* relies heavily on the language of the partial veto provisions of the Wisconsin Constitution. But the *Martin* court broadened its analysis to include policy themes which figure prominently in later partial veto disputes. The court reemphasized the *Henry* holding that partial vetoes validly could alter legislative policy as long as a complete, workable law remained. The *Martin* court, though, went beyond the *Henry* court and explicitly stated that the purpose of the 1930 partial veto amendment had been to control the logrolling engendered by omnibus appropriation bills. Thus, the *Martin* court began to diverge from interpreting the partial veto authority on the basis of the seemingly straightforward text of the 1930 amendment.

Thirty-five years passed before the partial veto controversy again wound its way into the Wisconsin Supreme Court.⁷⁶ In the interim, efforts to modify and clarify the scope of the partial veto authority periodically occupied the attention of the legislative and executive branches of Wisconsin state government.⁷⁷

71. *Id.* at 447-48, 289 N.W. at 664.

72. *Id.* at 448, 289 N.W. at 664.

73. *Id.* at 449, 289 N.W. at 665.

74. See *supra* note 38 and accompanying text.

75. *Finnegan*, 220 Wis. at 449-50, 264 N.W. at 624-25. See *supra* note 50 and accompanying text.

76. *State ex rel. Sundby v. Adamany*, 71 Wis. 2d 118, 237 N.W.2d 910 (1976). See *infra* notes 97-112 and accompanying text.

77. A constitutional amendment proposed in 1941 would have specified that governor could disapprove or reduce items or parts of items in any appropriation bill. 194 Assembly Joint Resolution 71. A 1961 proposal would have allowed a simple majority o

Over the years, Wisconsin attorneys general were asked for increasingly difficult partial veto opinions.⁷⁸ Recurring problems included the policy consequences of permitting the governor to use the partial veto to change legislative policy, and the thorny question of just what constituted a "part" which could be vetoed. *Henry*, *Finnegan*, and *Martin* provided the basis for attorney general opinions on these issues; however, the issues addressed eventually moved beyond the clear holdings of those cases.

In 1966, the director of the state Bureau of Management requested an opinion from the attorney general about policy consequences stemming from the governor's partial veto of an appropriation bill.⁷⁹ The bill specified salary ranges for state legislators. Based on the "complete, workable law" principle, developed in *Henry*⁸⁰ and affirmed in *Martin*,⁸¹ the attorney general advised that a valid law survived the partial veto.⁸²

The state Senate asked the attorney general for advice in 1970, when the governor vetoed indigent fee exemptions contained in an omnibus judicial appropriation bill.⁸³ The attorney general responded⁸⁴ with the *Martin* theory that the partial veto authority existed to prevent logrolling.⁸⁵ Consequently, the partial veto authority would be meaningless if the governor could not restructure a proposed law in a way that changed the intent of the legislature.⁸⁶ The attorney general also advised that because a complete, workable law remained after the governor's vetoes, the legislature would have to pass a subsequent bill in order to repeal the resulting law.⁸⁷

the members of both houses to override a partial veto. 1961 A.J.R. 130, 1961-1962 Wis. Legis. (1962). (A two-thirds vote in both houses is constitutionally required to override any gubernatorial veto. Wis. CONST. art. V, § 10.) Other legislative proposals to control the partial veto failed in 1969 and 1973. A.J.R. 9, 1969-1970 Wis. Legis. (1969); A.J.R. 56, 1969-1970 Wis. Legis. (1969); A.J.R. 123, 1973-1974 Wis. Legis. (1974). In 1975, two proposed amendments advocated eliminating the partial veto. 1975 S.J.R. 46, 1975-1976 Wis. Legis. (1975); 1975 A.J.R. 61, 1975-1976 Wis. Legis. (1975). A third 1975 proposal would have protected non-appropriation language by limiting partial vetoes to individual paragraphs or amounts. 1975 A.J.R. 74, 1975-1976 Wis. Legis. (1975). None of these proposed amendments seriously threatened the existing partial veto authority.

78. Attorney general opinions do not bind the Wisconsin Supreme Court. An opinion is entitled to the persuasive effect accorded it by the court on later examination. *Wisconsin Senate*, 144 Wis. 2d at 460, 424 N.W.2d at 397 (citing *State ex rel. La Follette v. Stitt*, 114 Wis. 2d 358, 375, 338 N.W.2d 684, 692 (1983)).

79. Act of June 29, 1966, Ch. 592, Laws of 1965, 1965 Wis. Laws 1053.

80. See *supra* note 50 and accompanying text.

81. See *supra* note 75 and accompanying text.

82. 55 Op. Att'y Gen. of Wis. 159 (1970).

83. 1969 Wis. Laws 253.

84. 59 Op. Att'y Gen. of Wis. 94 (1970).

85. See *supra* notes 71-72 and accompanying text.

86. 59 Op. Att'y Gen. of Wis. 99-100 (1970).

87. *Id.* at 101. The legislature had tried to protect its enacted legislative policy by rescinding approval of the non-vetoed portion of the judicial appropriation bill.

The propriety of using the partial veto to alter appropriations by striking individual digits surfaced in a 1973 attorney general opinion.⁸⁸ The chair of the Committee on Senate Organization sought the attorney general's opinion on this issue after the governor vetoed the "2" in a bill appropriating "\$25,000,000" in bonding authority for state highway improvements.

The attorney general opined that the partial veto allowed a governor to accept or to reject, but not to alter, a separable part of an appropriation bill.⁸⁹ The attorney general reasoned that if a complete, workable law must remain after a partial veto was exercised, then a complete, workable part of legislation must also be vetoed.⁹⁰ Otherwise, a partial veto could not be returned to the legislature "in the same manner as provided for other bills."⁹¹ Because the "2" vetoed from the bonding appropriation was not a complete, workable part, the attorney general concluded that the governor had invalidly exercised his partial veto authority.⁹²

Similarly, the attorney general issued another opinion stating that a condition placed on an appropriation was not a separable part subject to partial veto.⁹³ The governor had vetoed one of two funding provisions attached to a snowmobile law enforcement bill,⁹⁴ and the Committee on Senate Organization inquired about the validity of the veto. Quoting *Henry*, the attorney general noted:

[W]hat constitutes a 'part' of an appropriation bill, and is therefore subject to a partial veto under sec. 10, art. V, Wisconsin constitution, is not difficult to ascertain . . . if . . . the provisions in the disapproved parts of [the bill] were not provisos or conditions upon which the appropriation in the approved portions was made dependent or contingent.⁹⁵

The attorney general reasoned that the vetoed funding provision constituted a proviso or condition on the snowmobile enforcement appropriation. Although the *Henry* court had not affirmatively stated that a proviso or condition could not be partially vetoed, the attorney general reached that conclusion and advised that the governor's attempted partial veto was invalid.⁹⁶

88. 62 Op. Att'y Gen. of Wis. 238 (1973).

89. *Id.* at 239.

90. *Id.*

91. See *supra* note 66.

92. 62 Op. Att'y Gen. of Wis. 240 (1973).

93. 63 Op. Att'y Gen. of Wis. 313 (1974).

94. Act of June 15, 1974, Ch. 298, Laws of 1973, 1973 Wis. Laws 850.

95. 63 Op. Att'y Gen. of Wis. 313 (1974) (quoting *Henry*, 218 Wis. at 313-14, 260 N.W. at 491).

96. 63 Op. Att'y Gen. of Wis. 317 (1974).

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C. Evolving Policy Considerations

In 1976, partial veto policy issues raised in earlier attorney general opinions finally came before the Wisconsin Supreme Court. *State ex rel. Sundby v. Adamany*⁹⁷ followed Governor Lucey's partial veto of non-appropriation language from an appropriation bill providing for local referenda before Wisconsin towns increased their tax levies.⁹⁸ The bill passed by the legislature made local referenda optional, but the governor's vetoes effectively made the local referenda mandatory.⁹⁹ A taxpayer brought *Sundby* as a declaratory judgment action, seeking invalidation of the governor's vetoes.

The central issue facing the *Sundby* court was the extent of item veto authority over non-appropriation provisions attached to appropriation legislation.¹⁰⁰ Governor Lucey's partial vetoes neither altered an appropriation nor eliminated a contingency on an appropriated amount.¹⁰¹ Therefore, the *Sundby* court inquired whether a separable portion of the appropriation bill had been vetoed and whether a complete, workable law remained.¹⁰² Without much discussion, the court opined that a complete, workable law remained, as required by *Henry* and *Martin*.¹⁰³ The court acknowledged that *Henry* and *Martin* had established that partial vetoes permissibly could alter legislative policy.¹⁰⁴ The court went on to provide an extensive policy justification for the governor's local referendum vetoes.

The *Sundby* court reasoned that the governor's quasi-legislative role justified using partial vetoes to alter legislative policy. The Wisconsin Constitution vested legislative power in the state Senate and in the state Assembly.¹⁰⁵ But the court cited both the state constitution¹⁰⁶

97. 71 Wis. 2d 118, 237 N.W.2d 910 (1976).

98. Act of June 30, 1975, Ch. 39, Laws of 1975, 1975 Wis. Laws 51 (amended, repealed and repealed and recreated in part by Act of Oct. 1, 1975, Ch. 80, Laws of 1975, 1975 Wis. Laws 362).

99. *Sundby*, 71 Wis. 2d at 124, 237 N.W.2d at 912.

100. *Id.* at 131, 237 N.W.2d at 916.

101. *Id.*

102. *Id.* at 130-31, 237 N.W.2d at 916. The *Sundby* court based this inquiry on the partial veto validity criteria identified in *Henry* and *Martin*. See *supra* notes 37-54, 63-75 and accompanying text.

103. The court found no "need to consider these opinions or the propositions they stand for because there is no question in this case that the governor neither altered an appropriation nor removed a contingency or condition on the amount appropriated." *Sundby*, 71 Wis. 2d at 131, 237 N.W.2d at 916.

104. *Id.* at 130, 237 N.W.2d at 916.

105. *Id.* at 131, 237 N.W.2d at 916 (citing Wis. CONST. art. IV, § 1).

106. Wis. CONST. art. V, § 4 states:

[The governor] shall have power to convene the legislature on extraordinary occasions, and in case of invasion, or danger from the prevalence of contagious disease at the seat of government, he may convene them at any other suitable place within the state. He shall communicate to the legislature, at every session, the condition

3, 1973 Wis. Laws 850.

ng *Henry*, 218 Wis. at 313-14, 260

and the state biennial budget statute¹⁰⁷ as evidence of a recognized legislative role for the governor.¹⁰⁸ The court also quoted *Henry* for the proposition that the governor possessed a quasi-legislative role.¹⁰⁹

The *Sundby* court also affirmed that the governor could use partial veto authority to make affirmative policy changes.¹¹⁰ The court found that every veto has both a negative aspect and a positive aspect, and that the decision to veto always involved policy considerations.¹¹¹ Therefore, the court reasoned, the partial veto provisions of the state constitution fully anticipated that the governor's vetoes would alter enacted legislative policy.¹¹²

The *Sundby* decision broke no new ground concerning partial veto execution. Instead, the *Sundby* court reemphasized rules and policy developed in *Henry*¹¹³ and *Martin*¹¹⁴ regarding the scope of the partial veto. Nevertheless, the court did gratuitously expand the related concept of a recognized quasi-legislative role for the Wisconsin governor. Although firmly anchored in the texts of the state constitution, statutes

of the state, and recommend such matters to them for their consideration as he may deem expedient. . . . He shall expedite all such measures as may be resolved upon by the legislature, and shall take care that the laws be faithfully executed.

107. WIS. STATS. § 16.46 (1987-1988) states:

The biennial state budget report shall be prepared by the secretary, under the direction of the governor, and a copy of a budget-in-brief thereof shall be furnished to each member of the legislature on the day of delivery of the budget message. The biennial state budget report shall . . . contain the following information:

(1) A summary of the actual and estimated receipts of the state government in all operating funds under existing laws during the current and the succeeding bienniums . . . ;

(2) A summary of the actual and estimated disbursements of the state government from all operating funds during the current biennium and of the requests of agencies and the recommendations of the governor for the succeeding biennium;

(3) A statement showing the condition of all operating funds of the treasury at the close of the preceding fiscal year and the estimated condition at the close of the current year;

(4) A statement showing how the total estimated disbursements during each year of the succeeding biennium compare with the estimated receipts, and the additional revenues, if any, needed to defray the estimated expenses of the state;

(5) A statement of the actual and estimated receipts and disbursements of each department and of all state aids and activities during the current biennium, the departmental estimates and requests, and the recommendations of the governor for the succeeding biennium. . . .

(6) Any explanatory matter which in the judgement of the governor or the secretary will facilitate the understanding by the members of the legislature of the state financial condition and of the budget requests and recommendations.

108. *Sundby*, 71 Wis. 2d at 131-33, 237 N.W.2d at 916-18.

109. *Sundby*, 71 Wis. 2d at 133-34, 237 N.W.2d at 917-18 (citing *Henry*, 218 Wis. at 315, 260 N.W. at 492).

110. *Sundby*, 71 Wis. 2d at 134, 237 N.W.2d at 918.

111. *Id.*

112. *Id.*

113. See *supra* notes 37-54 and accompanying text.

114. See *supra* notes 63-75 and accompanying text.

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and earlier cases,¹¹⁵ this focus on the governor's institutional role assumed increased importance in later partial veto litigation. Indeed, *Sundby* marked a turning point in partial veto analysis, as the Wisconsin Supreme Court de-emphasized textual analysis and increasingly engaged in institutional analysis.¹¹⁶

The increasing tension between the legislative and executive branches over exercise of the partial veto power exploded in 1977. The legislature passed a bill permitting state citizens to contribute campaign finance funds to candidates for public office.¹¹⁷ The legislative funding mechanism anticipated collecting contributions in conjunction with state income tax returns; contributions were added to tax payments due. After payment, contributions were turned over to the State Elections Board. Acting Governor Martin Schreiber, partially vetoing the campaign financing bill, changed the funding mechanism from a contribution to a "check-off." In effect, the acting governor's vetoes permitted taxpayers actually to designate a portion of their tax payments for campaign financing.

The chair of the Senate Organization Committee asked the attorney general to issue an opinion concerning the legality of the campaign financing partial veto.¹¹⁸ The attorney general responded that the partial vetoes were invalid.¹¹⁹ Consequently, the attorney general opined that the entire campaign financing law should be considered vetoed.¹²⁰

The attorney general was not troubled by the policy changes achieved by the acting governor's campaign financing vetoes; *Sundby* had already indicated that affirmative legislation was a proper partial veto result.¹²¹ The attorney general reasoned, however, that *Sundby* had affirmed earlier attorney general opinions finding that a governor could not veto conditions placed upon appropriations.¹²² Because the attorney general determined that the contribution funding mechanism was a condition placed on any eventual campaign financing appropriation, the attorney general advised that the acting governor's partial vetoes were invalid.¹²³

The campaign financing partial veto controversy spilled over into the Wisconsin Supreme Court. In *State ex rel. Kleczka v. Conta*,¹²⁴ the

115. See *supra* notes 105-09 and accompanying text.

116. See *infra* notes 170-219 and accompanying text.

117. Act of Oct. 20, 1977, Ch. 107, Laws of 1977, 1977 Wis. Laws 588.

118. 66 Op. Att'y Gen. of Wis. 310 (1977).

119. The attorney general determined that the campaign financing law constituted an appropriations bill because the funds collected would be used for a public purpose: campaign financing. *Id.* at 311.

120. *Id.* at 315.

121. *Id.* at 311.

122. *Id.* at 312-14. See *supra* notes 93-96.

123. 66 Op. Att'y Gen. of Wis. 314 (1977).

124. 82 Wis. 2d 679, 264 N.W.2d 539 (1978).

court disagreed with the attorney general's campaign financing opinion.¹²⁵ Instead, the *Klecza* court held that the Wisconsin Constitution authorized partial veto of conditions or provisos attached to legislative appropriations.¹²⁶

Writing for the majority, Justice Heffernan easily determined that the campaign financing bill constituted an appropriation bill¹²⁷ and that Acting Governor Schreiber had properly returned vetoed portions of the bill to the legislature.¹²⁸ The court also confirmed the *Henry*, *Martin* and *Sundby* holdings that policy alteration did not invalidate the gubernatorial partial vetoes.¹²⁹

After disposing of these preliminary issues, the *Klecza* court squarely confronted whether conditions attached to appropriations could be partially vetoed. The court identified severability as the test of partial veto validity and reasoned that severability must be determined as a matter of substance rather than as a matter of form.¹³⁰ But the court required that severability be tested against standards promulgated by earlier Wisconsin courts, not against standards announced by courts operating under other constitutions.¹³¹ In Wisconsin, *Henry*¹³² and *Martin*¹³³ indicated that the appropriate test of severability was whether a complete, workable law remained after the governor's partial veto exercise.¹³⁴ After sketching the perimeter of the Wisconsin severability test, the court turned to partial veto of provisos or conditions.

The *Klecza* court reasoned that *Sundby* authorized the governor to alter legislative policy through partial veto execution.¹³⁵ Expanding on this premise, the court noted that the governor's ability to change policy was "coextensive with the ability of the Legislature to enact the policy initially."¹³⁶

Regarding Acting Governor Schreiber's partial vetoes, the court acknowledged that the voluntary nature of the contribution mechanism could be interpreted as a proviso or condition inseparable from any campaign financing appropriation.¹³⁷ The court further acknowledged

125. See *supra* notes 117-23 and accompanying text.

126. *Klecza*, 82 Wis. 2d at 715, 264 N.W.2d at 555.

127. *Id.* at 688, 264 N.W.2d at 542.

128. *Id.* at 693-94, 264 N.W.2d at 545.

129. *Id.* at 708-09, 264 N.W.2d at 552. See *supra* notes 37-54, 63-75, 97-112 and accompanying text.

130. *Klecza*, 82 Wis. 2d at 705, 264 N.W.2d at 550.

131. *Id.*

132. See *supra* note 50 and accompanying text.

133. See *supra* note 75 and accompanying text.

134. *Klecza*, 82 Wis. 2d at 705-08, 264 N.W.2d at 550-53.

135. *Sundby*, 71 Wis. 2d at 134, 237 N.W.2d at 918.

136. *Klecza*, 82 Wis. 2d at 709, 264 N.W.2d at 552.

137. *Id.* at 712, 264 N.W.2d at 553.

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that "the dicta of Wisconsin cases" lent support to the idea that the contribution mechanism was an inseparable proviso that could not be altered.¹³⁸

The *Klecza* court, however, opined that the earlier Wisconsin dicta represented inconsidered statements made to appease disappointed litigants.¹³⁹ *Henry* marked the first appearance of the dicta in Wisconsin partial veto case law; the principles discussed in the *Henry* dicta derived from a Mississippi partial veto challenge.¹⁴⁰ The Mississippi Constitution, unlike the Wisconsin Constitution, specifically permitted the state legislature to set conditions on appropriations.¹⁴¹ Therefore, the *Henry* dicta did not correctly state Wisconsin law and had no precedential value.¹⁴²

Instead, the court determined that no similar provision in the Wisconsin Constitution limited partial veto authority. The *Klecza* court concluded that "[u]nder the Wisconsin Constitution, the governor may exercise his partial-veto power by removing provisos and conditions to an appropriation so long as the net result . . . is a complete, entire, and workable bill which the legislature itself could have passed in the first instance."¹⁴³ The campaign financing bill was an appropriation bill. A "complete, entire, and workable bill" remained after exercise of the governor's partial veto.¹⁴⁴ Thus, the court found that a valid law had been enacted and published.¹⁴⁵

The *Klecza* decision produced the first dissenting opinion in the history of Wisconsin partial veto litigation.¹⁴⁶ Justice Connor T. Hansen agreed that Justice Heffernan correctly rejected the elusive partial veto tests adopted by Mississippi and other jurisdictions.¹⁴⁷ Justice Hansen, however, believed that the *Klecza* majority had gone too far in holding that inseparable conditions attached to legislative appropriations could be partially vetoed.¹⁴⁸

Justice Hansen's analysis focused on separation of powers issues, especially the legislative role attributed to the governor by the majority. According to Justice Hansen, the Wisconsin Constitution provided for three branches of government; no branch was allowed to perform the functions of the other branches.¹⁴⁹ Consequently, he viewed as very

138. *Id.*

139. *Id.* at 713, 264 N.W.2d at 554.

140. *State ex rel. Teachers and Officers v. Holder*, 76 Miss. 158, 23 So. 643 (1898). See *supra* note 38 and accompanying text.

141. *Klecza*, 82 Wis. 2d at 712 n.4, 264 N.W.2d 553 n.4.

142. *Id.* at 713, 264 N.W.2d at 554.

143. *Id.* at 715, 264 N.W.2d at 555.

144. *Id.*

145. *Id.* at 715-16, 264 N.W.2d at 555.

146. *Id.* at 716, 264 N.W.2d at 555 (Hansen, J., concurring in part and dissenting in part).

147. *Id.*

148. *Id.*

149. *Id.* at 718-19, 264 N.W.2d at 556-57.

limited any legislative role assigned to the governor. The governor's legislative role, Justice Hansen reasoned, should not be distorted on grounds of administrative convenience, such as state budget preparation.¹⁵⁰ Accordingly, Justice Hansen maintained that the previously recognized partial veto limitations should be retained,¹⁵¹ even if the previous limitations originated in dicta. Justice Hansen found no justification for changing the limitations, either in the history of the 1930 partial veto amendment or in the constitutional provisions added by the amendment. Requiring only that a partially vetoed bill constitute a complete, workable law, Justice Hansen reasoned, imposed too little restraint on gubernatorial usurpation of legislative power.¹⁵²

Further, Justice Hansen warned that the majority's decision left no barrier preventing a governor from striking part of an appropriation figure.¹⁵³ He also expressed concern because the majority no longer provided grounds for objection to partial vetoes that increased appropriations.¹⁵⁴ Worst of all, in Justice Hansen's analysis, the new test posed no obstacle to producing a complete and workable law unrelated to the subject of a bill passed by the legislature.¹⁵⁵

Recalling that the *Henry* court had interpreted the partial veto as applicable only to legislative components that could be enacted separately, Justice Hansen opined that the power to veto legislative components did not include the power to reduce a bill to single phrases, words, letters and punctuation marks. Justice Hansen recalled that use of the partial veto had become ever more frequent and had been applied to ever smaller portions of legislative bills. He observed:

Only the limits of one's imagination fix the outer limits of the exercise of the partial veto power by incision or deletion by a creative person. At some point this creative negative constitutes the enacting of legislation by one person, and at precisely that point the governor invades the exclusive power of the legislature to make laws.¹⁵⁶

In conclusion, Justice Hansen suggested limiting the partial veto to grammatically and structurally distinct portions of legislation.¹⁵⁷ Unlike the ambiguous standard resulting from the majority's historical analysis, Justice Hansen reasoned that his proposed test could be pre-

150. *Id.*

151. *Id.* at 722, 264 N.W.2d at 558.

152. *Id.* at 722-27, 264 N.W.2d at 558-61.

153. The issue of striking digits from appropriation figures was left open by the *Sundby* court. *Id.* at 723, 264 N.W.2d at 558-59.

154. *Id.*

155. *Id.* at 723, 264 N.W.2d at 559.

156. *Id.* at 720, 264 N.W.2d at 557.

157. *Id.* at 726, 264 N.W.2d at 560.

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dictably applied, would not require constant judicial mediation of policy disputes between the other branches of state government, and would protect the prerogatives reserved to the legislature by the constitution.¹⁵⁸

The *Kleccka* majority continued the trend, initiated by the *Sundby* court, away from textual analysis of partial veto authority and toward institutional analysis of the roles of the governor and the legislature. As Justice Hansen pointed out in his dissent, increasingly complicated partial veto questions required increasingly sophisticated analyses that increasingly departed from the text of the Wisconsin Constitution. The majority demonstrated a tendency to adhere to the text of earlier opinions and to reason from the language of those opinions to justify policy results deemed desirable by the majority of the court. But once policy considerations began to dominate partial veto analysis, it became ever harder to determine where lines could be drawn between proper and improper exercise of the partial authority. Consequently, the policy based analysis that the court still claimed to derive from the text of the constitution became more and more strained.

Following *Kleccka*, sustained legislative efforts to halt further expansion of the partial veto power occurred in the late 1970s and early 1980s.¹⁵⁹ Only one amendment¹⁶⁰ proposed between 1930 and 1988 passed both houses of the legislature on first consideration. Although defeated on reconsideration in the next legislative session, the amendment would have adopted the test proposed by Justice Hansen's *Kleccka* dissent: partial vetoes only for legislative parts that could have been enacted as complete, workable laws.¹⁶¹

158. Several attorney general opinions followed the *Kleccka* case. In 70 Op. Att'y Gen. of Wis. 154 (1981), the speaker of the state Assembly was advised that the governor could not attempt to remove partial vetoes against an appropriation bill once the governor had returned a veto message to the legislature. In 70 Op. Att'y Gen. of Wis. 189 (1981), the attorney general addressed procedural problems resulting from a bungled attempt to execute partial vetoes. When the governor tried to fix his partial veto errors and reconcile what he had done with what he had meant to do, the attorney general was called on to provide an opinion about the physical manifestation of partial vetoes in an appropriation bill.

Two other attorney general opinions raised the partial veto stakes somewhat by analogizing the partial veto powers of county executives to the partial veto powers of the governor. Like the governor, a county executive may veto non-appropriation parts of an ordinance or county board resolution containing an appropriation. 73 Op. Att'y Gen. of Wis. 92 (1984). Like the legislature, a county board may not amend a resolution or an ordinance after the county executive has vetoed the document and returned it to the board. 74 Op. Att'y Gen. of Wis. 73 (1985).

159. 1977 Senate Joint Resolution 46 would have prohibited partial veto of less than an entire dollar amount or a numbered section of law included in an appropriation bill. 1979 Senate Joint Resolution 16 would have limited partial vetoes to complete sections of appropriation bills.

160. 1979 S.J.R. 7, 1979-1980 Wis. Legis. (1979). This amendment also would have allowed deletion only of complete dollar amounts.

161. A similar amendment, limiting partial vetoes to complete dollar amounts or

II. THE PRESENT: LETTERS AND DIGITS

The Wisconsin partial veto authority eventually extended to letters and digits, as Justice Hansen had predicted in his *Klecza* dissent.¹⁶² In June 1987, the Wisconsin legislature passed the omnibus 1987-1988 biennial budget bill.¹⁶³ Governor Tommy G. Thompson executed 29 partial vetoes before signing the budget bill. The unprecedented number¹⁶⁴ of Governor Thompson's partial vetoes sparked controversy in the legislature¹⁶⁵ and among state government observers. Governor Thompson's partial vetoes also inspired controversy because some of the vetoes were quite "creative." Some vetoes deleted single digits from appropriations and other numbers; other vetoes impounded select appropriations. Governor Thompson vetoed individual letters and parts of words, sometimes creating ungrammatical or incomprehensible text. The governor also vetoed isolated subunits of the budget bill and in some cases, partially vetoed instructions to "repeal and recreate" statutes to simply "repeal" those statutes.¹⁶⁶

JCLO,¹⁶⁷ on behalf of the legislature, filed a declaratory action challenging the governor's "creative" exercise of his constitutional partial veto authority.¹⁶⁸ Seeking a dispositive ruling on the scope of the partial veto authority, the action challenged thirty-seven vetoes representative of the 290 partial vetoes executed by Governor Thompson.¹⁶⁹

The Wisconsin Supreme Court voted four-to-three to uphold Governor Thompson's partial vetoes in *State ex rel. Wisconsin Senate v. Thompson*.¹⁷⁰ Chief Justice Heffernan, writing for the majority, held that

numbered sections of an appropriation bill, failed in the 1983 legislative session. S.J.R. 16, 1983-1984 Wis. Legis. (1983).

162. See *supra* notes 153-56 and accompanying text.

163. Act of July 31, 1987, 1987 Wis. Act 27, 1987 Wis. Laws 69.

164. See *supra* note 3 and accompanying text.

165. Democratic leaders convened a special legislative session on September 29, 1987, and attempted to override some of the governor's budget bill vetoes. All override attempts, however, failed. See 1 BULLETIN OF PROCEEDINGS OF THE WISCONSIN LEGISLATURE, 1987-88 Sess. 53 (1989).

166. Petitioners' Brief at 4-7, *State ex rel. Wisconsin Senate v. Thompson*, 144 Wis. 2d 429, 424 N.W.2d 385 (1988) (No. 87-1750-OA).

167. See *supra* note 10 and accompanying text.

168. Parties joining JCLO as plaintiffs included the Wisconsin Senate; Fred Risser, President of the Wisconsin Senate; the Wisconsin Assembly; and Thomas Loftus, Speaker of the Wisconsin Assembly.

169. The petitioners contended that Wis. CONST. art. V, § 10 conferred no gubernatorial authority to veto letters, digits or words, or to reduce appropriation amounts. The governor maintained that the constitution and *Klecza* permitted veto of any part of an appropriation bill—including letters, digits and words—as long as a complete, workable law remained. *Wisconsin Senate*, 144 Wis. 2d at 434, 424 N.W.2d at 386.

170. 144 Wis. 2d 429, 424 N.W.2d 385 (1988).

the governor may, in the exercise of his partial veto authority over appropriation bills, veto individual words, letters and digits, and also may reduce appropriations by striking digits, as long as what remains after veto is a complete, entire, and workable law.¹⁷¹

For the first time, the majority also explicitly acknowledged "the long-standing practical and administrative interpretation or *modus vivendi* between governors and legislatures, that the consequences of any partial veto must be a law that is germane to the topic or subject matter of the vetoed provisions."¹⁷²

The majority observed that *Henry* had indelibly set the broad scope of Wisconsin's partial veto power by distinguishing the ability of Wisconsin governors to veto appropriation bill "parts" from the ability of other state governors to veto "items."¹⁷³ Recalling the textual constitutional analysis performed by the *Henry* court,¹⁷⁴ the *Wisconsin Senate* majority reasoned that proponents of the 1930 partial veto amendment would have written "item" if they had intended that only "items" could be vetoed. Hence, the majority said, early partial veto interpretation established that the partial veto could be used to strike "parts" that were not separable as "items."¹⁷⁵ The *Henry* test, the majority stated, required: (1) that the bill partially vetoed be an appropriation bill, (2) that the part vetoed need not be an appropriation, and (3) that the approved portion contain a complete and workable law.¹⁷⁶

The majority reasoned that *Finnegan*¹⁷⁷ had again broadly interpreted the scope of the partial veto authority.¹⁷⁸ However, the majority did not identify any basis for this observation. The majority approved the *Martin* court's emphasis on the viability of the law remaining after partial veto of an appropriation bill.¹⁷⁹ The majority acknowledged that the *Martin* court had stated that prevention of logrolling¹⁸⁰ was the reason for providing state governors with partial veto authority.¹⁸¹

171. *Id.* at 437, 424 N.W.2d at 388.

172. *Id.* (emphasis in original).

173. *Id.* at 439, 424 N.W.2d at 388.

174. See *supra* notes 37-50 and accompanying text.

175. *Wisconsin Senate*, 144 Wis. 2d at 440-41, 424 N.W.2d at 388.

176. *Id.* at 441, 424 N.W.2d at 388-89.

177. See *supra* notes 55-62 and accompanying text.

178. *Wisconsin Senate*, 144 Wis. 2d at 441-42, 424 N.W.2d at 389-90.

179. *Id.* at 442, 424 N.W.2d at 390 (citing *Martin*, 233 Wis. at 450, 289 N.W. at 665).

180. "Logrolling" according to the *Martin* court, consisted of "jumbling together in one act inconsistent subjects in order to force a passage by uniting minorities with different interests when the particular provisions could not pass on their separate merits." *Martin*, 233 Wis. at 447-48, 289 N.W. at 264.

181. *Wisconsin Senate*, 144 Wis. 2d at 443, 424 N.W.2d at 390 (citing *Martin*, 233 Wis. at 447-48, 289 N.W. at 664).

The majority, though, discounted the importance of anti-logrolling policy because no Wisconsin statute or constitutional provision forbade the adoption of omnibus budget bills.¹⁸²

Furthermore, the majority found the partial veto authority conferred by the 1930 constitutional amendment "particularly ill-suited and cumbersome" as a means of preventing logrolling.¹⁸³ A limited definition of "logrolling," concentrating on specific vote-trading occurrences rather than broader underlying concepts, figured significantly in the majority's analysis.¹⁸⁴ Consequently, the majority concluded that the partial veto amendment had been adopted to facilitate governors' exercise of their quasi-legislative power, not to prevent logrolling.¹⁸⁵ Reviewing later Wisconsin partial veto cases, the majority also found that *Sundby* and *Kleczka* had acknowledged a broadly sweeping partial veto authority.¹⁸⁶

Summarizing the five Wisconsin partial veto cases, the majority extracted three central principles. First, Wisconsin partial veto authority was uniquely broad and expansive, to permit Wisconsin governors to deal flexibly with omnibus appropriation bills. Second, partial veto authority could be exercised against provisos and conditions attached to appropriations. Third, partial veto authority could be used to effect positive or negative changes in policy or in appropriations.¹⁸⁷ The majority noted that the quintet of cases developing these principles—*Henry*,¹⁸⁸ *Finnegan*,¹⁸⁹ *Martin*,¹⁹⁰ *Sundby*¹⁹¹ and *Kleczka*¹⁹²—had been nearly unanimous, producing just one dissenting opinion.¹⁹³

Although the *Wisconsin Senate* majority accurately derived and stated these principles, it also distorted the principles. The majority claimed to evaluate both the language and policy of Governor Thompson's partial vetoes, thus continuing analytic patterns originated and followed in the earlier cases. By discounting the significance of anti-logrolling policy, however, the majority divorced earlier textual interpretations from the policy that underlay those interpretations. The *Wisconsin Senate* majority claimed to derive its analysis from the text of earlier opinions and the constitution itself; but, in fact, the majority

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182. *Wisconsin Senate*, 144 Wis. 2d at 445, 424 N.W.2d at 390.

183. *Id.* at 446, 424 N.W.2d at 391.

184. *Id.* at 442-47, 424 N.W.2d at 390-92.

185. *Id.*

186. *Id.* at 447-50, 424 N.W.2d at 392-93.

187. *Id.* at 450-51, 424 N.W.2d at 393.

188. See *supra* notes 37-50 and accompanying text.

189. See *supra* notes 56-62 and accompanying text.

190. See *supra* notes 63-75 and accompanying text.

191. See *supra* notes 97-112 and accompanying text.

192. See *supra* notes 124-58 and accompanying text.

193. *Wisconsin Senate*, 144 Wis. 2d at 450, 424 N.W.2d at 393.

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the partial veto authority condemnation "particularly ill-suited to preventing logrolling."¹⁸³ A limited focus on specific vote-trading concepts, figured significantly, the majority concluded that adopted to facilitate governors', not to prevent logrolling.¹⁸⁵ In cases, the majority also found a broadly sweeping partial

partial veto cases, the majority, Wisconsin partial veto authority, to permit Wisconsin government appropriation bills. Second, partial vetoes and conditions attached to veto authority could be used in appropriations.¹⁸⁷ Cases developing these principles by *Sundby*¹⁹¹ and *Klecza*¹⁹²—the dissenting opinion.¹⁹³ The majority accurately derived and applied the principles. The majority policy of Governor Thompson's patterns originated and the significance of anti-logrolling earlier textual interpretation. The *Wisconsin* analysis from the text of the bill, but, in fact, the majority

N.W.2d at 390.

utilized precedential language while rejecting the clearly stated policy relied on by earlier courts.

Instead, the *Wisconsin Senate* majority focused on the quasi-legislative role first attributed to Wisconsin governors in *Henry*.¹⁹⁴ Ironically, the *Wisconsin Senate* majority derived this analysis from language in which the *Henry* court identified a gubernatorial quasi-legislative role with logrolling prevention.¹⁹⁵

By analyzing this language out of context, the *Wisconsin Senate* majority performed a textual analysis that seemingly ignored the policy underpinnings relied on by earlier courts and instead substituted policy of the majority's preference.

The majority did identify some limitations on the governor's quasi-legislative power.¹⁹⁶ The majority noted that none of the 988 partial vetoes executed between 1931 and October 1987 had created a totally new, unrelated or nongermane law.¹⁹⁷ The majority inferred that all governors had recognized an inherent topicality or germaneness limitation on the partial veto authority.¹⁹⁸ The majority reasoned that a germaneness limitation on the exercise of partial vetoes provided a practical explanation of historical relations between Wisconsin governors and legislatures. Therefore, the majority held, a germaneness limitation on partial vetoes had achieved the force of law.¹⁹⁹

The germaneness limitation recognized by the *Wisconsin Senate* majority imposes an amorphous limit on gubernatorial partial veto authority. The majority did not clearly define the dimensions of "germaneness." The definitions of other ambiguous words related to the partial veto authority have been litigated.²⁰⁰ Thus, future litigation

194. *Henry*, 218 Wis. at 315, 260 N.W. at 492.

195. According to the *Henry* court, there are reasons why the governor should have a coextensive power of partial veto, to enable him to pass, in the exercise of his quasi-legislative function, on each separable piece of legislation or law on its own merits. . . . in order to check or prevent the evil consequences of improper joinder, so far, at least, as appropriation bills are concerned, it may well have been deemed necessary, in the interest of good government, to confer upon the Governor . . . the right to pass independently on every separable piece of legislation in an appropriation bill.

Id. at 315, 260 N.W. at 492. Justice Bablitch raised this point in his *Wisconsin Senate* dissent. *Wisconsin Senate*, 144 Wis. 2d at 470, 424 N.W.2d at 400-01 (Bablitch, J., dissenting in part, concurring in part).

196. The existence of an inherent germaneness limitation on the partial veto power was raised in oral arguments preceding the *Wisconsin Senate* decision. *Wisconsin Senate*, 144 Wis. 2d at 451, 424 N.W.2d at 393.

197. *Id.* at 451, 424 N.W.2d at 393-94.

198. *Id.* at 452, 424 N.W.2d at 394.

199. *Id.*

200. For example, *Henry* attempted to clarify what constituted a "part." See *supra* notes 43-47 and accompanying text. Similarly, *Finnegan* addressed the definition of an "appropriation bill." See *supra* notes 59-61 and accompanying text.

attempting to define the limits of the germaneness requirement can be anticipated.

The *Wisconsin Senate* majority recognized that the complete, workable law requirement²⁰¹ also limited gubernatorial partial veto authority. This requirement, the majority reasoned, provided an objective test permitting a governor to determine in advance the validity of a particular partial veto.²⁰² But like the germaneness requirement, the complete, workable law requirement does not significantly restrict the governor's quasi-legislative power.²⁰³

Although primarily emphasizing the gubernatorial quasi-legislative power, the majority implicitly recognized that separation of powers issues could not be totally eliminated from partial veto analysis. The majority reasoned that gubernatorial quasi-legislative power did not threaten constitutional separation of powers requirements because an alternative process allowed the legislature to protect initiatives from the partial veto. Specifically, the legislature could submit substantive legislation as a separate bill, instead of as part of an omnibus appropriations package.²⁰⁴ The majority declined to discuss whether submitting numerous substantive and appropriation bills, as a protective maneuver, should be preferred public policy.²⁰⁵

Ultimately, the majority held that the broad quasi-legislative power approved in prior decisions dictated that Governor Thompson's vetoes of letters and words were valid and constitutional.²⁰⁶ Analogously, the majority decided that individual digits could be vetoed to reduce individual appropriations. Although the state constitution did not specifically authorize reduction of appropriation items, neither did the state constitution specifically prohibit reduction of appropriation items. Therefore, the majority found that the constitution conveyed implicit authority to use partial vetoes to reduce appropriations.²⁰⁷

201. *Wisconsin Senate*, 144 Wis. 2d at 453, 424 N.W.2d at 394.

202. *Id.*

203. The majority specifically declined to address the petitioners' allegation that some of the challenged partial vetoes were inartful, clumsy, ungrammatical or incomprehensible. In dicta, the majority stated that the test applied to partial vetoes is not a grammar test. *Id.* at 462-63, 424 N.W.2d at 398.

204. *Id.* at 463-64, 424 N.W.2d at 398-99.

205. *Id.* at 455, 424 N.W.2d at 395. In an aside to the legislature, the majority explicitly acknowledged that good practical, political and administrative reasons supported inserting non-appropriation initiatives into appropriation bills. The majority, however, claimed that a broad partial veto authority was needed to combat the "terrible abuse" invited by such "jumbling together." If the legislature was unhappy with the sweep of the partial veto power, the majority suggested keeping policy initiatives out of the budget bill. Alternatively, the majority suggested that the legislature consider amending the partial veto provisions of the constitution. *Id.* at 464-65, 424 N.W.2d at 399.

206. *Id.* at 465, 424 N.W.2d at 399.

207. *Id.* at 458, 424 N.W.2d at 396.

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A strong dissenting opinion disagreed with the portion of the majority opinion allowing the partial veto of individual letters.²⁰⁸ Justice Bablitch, joined by Justice Abrahamson and Justice Steinmetz, disagreed with the majority on separation of powers grounds, precedential grounds, and practical grounds. Justice Bablitch wrote that the state constitution gave the governor the power to approve and to veto, but not the power to create.²⁰⁹ He reasoned that allowing the governor to veto letters allowed the governor to create legislation. New, gubernatorially created legislation could be upheld with the approval of as few as twelve members of the legislature.²¹⁰ Therefore, Justice Bablitch wrote that permitting the governor to create legislation through partial veto exercise strained the state constitution beyond the breaking point.²¹¹ Furthermore, Justice Bablitch feared that such legislation invited terrible abuse which the constitutional framers could not have intended.²¹²

Justice Bablitch also reasoned that Wisconsin partial veto precedent did not dictate the majority's holding; rather, the partial veto amendment history dictated an opposite result.²¹³ He charged that the majority had abandoned the purpose of the amendment—prevention of logrolling—consistently relied on in earlier litigation.²¹⁴

On the separation of powers issue, Justice Bablitch reasoned that allowing a governor to enact new, germane legislation conferred gubernatorial legislative power surpassing that of the legislature. Ordinarily, enactment of legislation required passage by both houses of the legislature and signature by the governor.²¹⁵ The partial veto authority, however, allowed the governor to legislate independently, checked only by the threat of a potential veto override.

Furthermore, Justice Bablitch reasoned that the majority ignored a partial veto check imposed by *Klecza*. The *Klecza* court had held that the governor's power to disassemble legislation was coextensive with the legislature's power to assemble legislation.²¹⁶

Ultimately, Justice Bablitch argued that the court should recognize the plain meaning of the constitutional partial veto provision and longstanding constitutional principles. They reasoned that their interpre-

208. *Wisconsin Senate*, 144 Wis. 2d 466, 424 N.W.2d at 399-400 (Bablitch, J., dissenting in part, concurring in part).

209. *Id.* at 466, 424 N.W.2d at 399-400.

210. This would occur if 12 of the 33 state senators voted against a veto override attempt. Article V, section 10 of the Wisconsin Constitution requires the votes of two-thirds of the members of both legislative houses to override a gubernatorial veto.

211. *Wisconsin Senate*, 144 Wis. 2d at 466, 424 N.W.2d at 400.

212. *Id.* at 470, 424 N.W.2d at 401.

213. *Id.* at 468, 424 N.W.2d at 400.

214. *Id.* at 469-70, 424 N.W.2d at 401.

215. *Id.* at 471-73, 424 N.W.2d at 401-02.

216. *Id.* at 472-73, 424 N.W.2d at 402. See *supra* note 136 and accompanying text.

tation would avoid depleting limited government resources by eliminating continual wrangling over the validity of partial vetoes.²¹⁷

Therefore, Justice Bablitch and the other dissenters advocated adopting the *Klecza* approach and permitting the partial veto of entire words. Although new policy might be created by vetoing words, policy alteration would not be an inevitable or intentional result of such vetoes.²¹⁸ They also advocated allowing partial veto of digits, interpreting these vetoes as subsumed under the constitutional authority to veto in part. The dissenters reasoned that digit partial vetoes, unlike letter partial vetoes, could not create new law.²¹⁹

The *Wisconsin Senate* dissenting opinion followed established partial veto textual analysis and policy analysis more closely than did the majority opinion. Like the majority, the dissenters acknowledged that the partial veto power applied to digits and words. But the dissenters reached this position without the majority's distortion of precedent and underlying policy. The dissent recognized more clearly the relationship between anti-logrolling policy and separation of powers issues and provided practical reasons for restricting the targets of gubernatorial partial vetoes. Consequently, the dissent provided a stronger logical foundation for the conclusion it adopted.

Nevertheless, the *Wisconsin Senate* majority allowed broad Wisconsin partial veto authority. Therefore, the Wisconsin governor could veto digits, letters and words from appropriation bills, even if the resulting text was ungrammatical. The governor could veto inseparable conditions or provisos placed on appropriations, even if legislative policy was altered. Partial vetoes could affect legislative policy either positively or negatively.

Events transpiring after *Wisconsin Senate*, however, indicated wide support for change in the scope of Wisconsin partial veto authority. The *Wisconsin Senate* decision met with immediate and continuing criticism from the Wisconsin press,²²⁰ state citizens and many politicians. Many Wisconsin legislators, especially Democrats, criticized the broad partial veto authority upheld in *Wisconsin Senate*. For example, one Democrat claimed that giving one individual—the governor—the power to “promulgate legislation” with extensive partial ve-

217. *Wisconsin Senate*, 144 Wis. 2d at 474-75, 424 N.W.2d at 403.

218. *Id.* at 473-74, 424 N.W.2d at 403.

219. *Id.* at 474, 424 N.W.2d at 403.

220. See, e.g., *One-letter Vetoes Kind of Scary*, Wis. St. J., June 21, 1988, at 7A, col. 1; *Veto Power Needs a New Balance*, (Madison) Capital Times, June 17, 1988, at 14, col. 1; *Court Gives Governor Far Too Much Power*, LaCrosse Tribune, June 16, 1988, at A-4, col. 2; *Item-veto Abuses Must be Corrected*, (Appleton) Post-Crescent, June 16, 1988, at A-4, col. 1; *Nutty Ruling Invites Veto Excesses*, Milwaukee J., June 16, 1988, at 14A, col. 1; *Legislators, Not Court, Must Make the Change*, Racine J. Times, June 16, 1988, at 8A, col. 1.

toes violated every form of government.²²¹ The partial veto issue, however, transcended party lines. Some Republicans also believed that *Wisconsin Senate* conferred too much power for any chief executive to possess.²²²

For various reasons, however, Governor Thompson and many members of the state Republican party approved of the *Wisconsin Senate* outcome. One Republican legislator cited the benefit of allowing governors to edit legislation for consistency.²²³ Governor Thompson's legal counsel approved of a partial veto power that was coextensive with the ability of the state legislature to assemble legislation.²²⁴ Governor Thompson's budget director noted that a broad partial veto permitted deletion of budget items not fully debated by the legislature, thus saving state funds, and allowing the governor to work cooperatively with legislators to modify the state budget to achieve mutual goals.²²⁵

Although much of the partial veto discussion was phrased in separation of powers terms, other issues complicated the debate. Partisan politics played some role in the controversy, both explicitly and implicitly. Governor Thompson's 290 partial vetoes occurred at a time when a Republican occupied the governor's office but Democrats controlled both houses of the Wisconsin legislature. On the other hand, the legislature simply overrode controversial partial vetoes executed by Governor Thompson's Democratic predecessor; no lawsuits or constitutional amendment efforts ensued.²²⁶ Personal political ambitions, too, were implicated, as Democratic gubernatorial hopefuls poised to challenge Governor Thompson in 1990.²²⁷

Various participants appeared to be manipulating the partial veto controversy for a variety of reasons. Although separation of powers concerns, partisan politics and personal political ambitions converged in most partial veto discussion, the bottom line was control of the state budget process.

Historically, most partial vetoes of Wisconsin appropriation legislation appear to have been motivated by policy or partisan consid-

221. Interview with Representative David Travis, Wisconsin State Assembly, in Madison, Wisconsin (Apr. 12, 1989).

222. Interview with Representative Randall Radtke, Wisconsin State Assembly, in Madison, Wisconsin (Apr. 7, 1989).

223. Interview with Representative David Prosser, Wisconsin State Assembly, in Madison, Wisconsin (Apr. 7, 1989).

224. Interview with Raymond Taffora, Legal Counsel to Governor Thompson, in Madison, Wisconsin (Apr. 12, 1989).

225. Interview with Richard Chandier, Wisconsin State Budget Director, in Madison, Wisconsin (Apr. 10, 1989).

226. Theobald Interview, *supra* note 44.

227. Wisconsin Assembly Speaker Thomas Loftus will oppose Governor Thompson in the November 1990 Wisconsin gubernatorial election.

erations, rather than by financial concerns.²²⁸ In fact, one prominent member of the current Assembly said that the existing process of tailoring legislation to procure passage produced an "auction atmosphere."²²⁹ Thus, Wisconsin legislative experience seemed to evidence the "logrolling" concerns of early partial veto advocates.²³⁰ Ultimately, regardless of the partisan issues or personal ambitions involved, the expansive partial veto power affirmed by *Wisconsin Senate* raised numerous concerns about the power structure of state government.

Perhaps with mixed motives, on June 30, 1988, Democratic leaders convened a special session of the Wisconsin legislature to consider state constitutional amendments limiting the partial veto authority. Three amendments were proposed at the special legislative session.²³¹ One amendment²³² would have prohibited the governor from vetoing less than a complete dollar amount as appropriated by the legislature or from vetoing less than a complete section of an appropriation bill. The amendment also would have prohibited veto of sentences or sections of law.²³³

Another amendment²³⁴ proposed allowing the governor to reject individual digits in any appropriation number, but prohibited increases in the amount of any appropriation. Further, the amendment would

228. Gosling, *Wisconsin Item-Veto Lessons*, 46 PUB. ADMIN. REV. 292 (1986). Wisconsin is not unique in this regard; analysis demonstrates that the governors of other states have also used item vetoes or partial vetoes mainly for partisan reasons. See Abney and Lauth, *The Line-Item Veto in the States: An Instrument for Fiscal Restraint or an Instrument for Partisanship?*, 45 PUB. ADMIN. REV. 372 (1985); Benjamin, *The Diffusion of the Governor's Veto Power*, 55 STATE GOVERNMENT 99 (1982); Holtz-Eakin, *The Line-Item Veto and Public Sector Budgets*, 36 J. PUB. ECON. 269 (1988); Bellamy, *Item Veto: Shield Against Deficits or Weapon of Presidential Power?*, 22 VAL. U.L. REV. 557 (1988).

229. Rosenthal, *The Legislative Institution: Transformed and at Risk*, in *The State of the States* 89 (C. Van Horn ed. 1989).

230. See *supra* notes 26-27 and accompanying text.

231. Wis. CONST. art. XII, § 1 states:

Any amendment or amendments to this constitution may be proposed in either house of the legislature, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be . . . referred to the legislature to be chosen at the next general election, and shall be published for three months previous to the time of holding such election; and if, in the legislature so next chosen, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the legislature to submit such proposed amendment or amendments to the people in such manner and at such time as the legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors voting thereon, such amendment or amendments shall become part of the constitution. . . .

232. S.J.R. 72, 1987-1988 Wis. Legis. (1988).

233. The Wisconsin Senate Committee on Judiciary and Consumer Affairs voted six-to-zero to recommend rejection of 1987 Senate Joint Resolution 72. The amendment never came before the full legislature for a vote. 1 BULLETIN OF THE PROCEEDINGS OF THE WISCONSIN LEGISLATURE, 1987-88 SESS. 181 (1988).

234. S.J.R. 75, 1987-1988 Wis. Legis. (1988).

have prohibited the governor from writing in new appropriation amounts and vetoing individual letters.²³⁵

A third, least restrictive partial veto amendment²³⁶ passed both the Senate and the Assembly.²³⁷ Several amendments to the proposed amendment were considered and rejected.²³⁸ As approved, the amendment provided that a governor may not veto individual letters in the words of an enrolled bill.

Political realities dictated which of the three partial veto amendments proposed at the 1988 special session ultimately won legislative approval. Early advocates of more extensive partial veto reforms threw their support to the approved amendment in the belief that it, unlike the other proposed amendments, was capable of passage by the legislature and approval by the public.²³⁹

Political realities may change, however, and both advocates and opponents admitted that subsequent amendments may attempt to limit the partial veto authority even further.²⁴⁰ In addition to the substantive provisions of the approved partial veto amendment, the amendment also restructured the existing partial veto provisions of the state constitution. In part, this restructuring aimed to facilitate later modifications to the partial veto provisions.

To amend the state constitution, after second passage by the 1989 Wisconsin Legislature, the partial veto amendment had to be approved in a statewide voter referendum. The Wisconsin Senate gave second approval to the amendment on January 26, 1989.²⁴¹ Observers had anticipated that the state Assembly would also act quickly in order to

235. The Wisconsin Senate Committee on Judiciary and Consumer Affairs reported 1987 Senate Joint Resolution 75 to the full Senate without recommendation on whether to approve the amendment. 1 BULLETIN OF THE PROCEEDINGS OF THE WISCONSIN LEGISLATURE, 1987-88 Sess. 181 (1988).

236. S.J.R. 71, 1987-1988 Wis. Legis. (1988).

237. The Senate voted 18-14 in favor of the joint resolution; the Assembly vote was 55 in favor, 35 opposed, and two paired. The approved joint resolution then became 1987 Enrolled Joint Resolution 76. 1 BULLETIN OF THE PROCEEDINGS OF THE WISCONSIN LEGISLATURE, 1987-88 Sess. 181 (1988).

238. One amendment would have permitted the governor to reject an appropriation amount and write in a lesser amount. The amendment was rejected by the Senate. Sen. Am. 1 to S.J.R. 71, 1987-1988 Wis. Legis. (1988). Another amendment would have clarified the prohibition against vetoing individual letters by substituting "letters from words, or create a new sentence by rejecting individual words." This amendment was tabled. Assembly Am. 1 to S.J.R. 71, 1987-1988 Wis. Legis. (1988). The most restrictive amendment, also tabled, would have prohibited the governor from vetoing less than a complete legislative concept. Assembly Am. 2 to S.J.R. 71, 1987-1988 Wis. Legis. (1988).

239. Travis Interview, *supra* note 221. Address by Representative Thomas Loftus, University of Wisconsin Law School Legislation Seminar, Madison, Wisconsin (Feb. 9, 1989).

240. Travis Interview, *supra* note 221. Prosser Interview, *supra* note 223.

241. The amendment was reintroduced for second consideration as 1989 Senate Joint Resolution 11 on January 24, 1989. The vote on the amendment was 22 in favor and 11 opposed. SENATE J., 1987-1988 Wis. Legis. 41 (Jan. 26, 1989).

place the amendment on the April 1989 general election ballot. The amendment stalled, however, in the Assembly Rules Committee from the end of January until late October. Finally, on October 31, 1989, the full Assembly gave second approval to the proposed amendment.²⁴²

Many observers, especially Democrats,²⁴³ agreed that the sweeping partial veto authority created problems that needed to be addressed somehow, even with a "stopgap" constitutional amendment.²⁴⁴ Legislators who believed that the proposed amendment did not sufficiently restrict the partial veto authority supported the proposal because they believed that some limit had to be placed on the expansive post-*Wisconsin Senate* partial veto authority.²⁴⁵ On the other hand, critics argued that the partial veto issue was critical and that the constitutional amendment process was moving too fast to permit careful, reasoned action.²⁴⁶ Despite these concerns, Wisconsin voters ratified the partial veto amendment in the April 1990 referendum.

242. The amendment was also introduced in the new legislature as 1989 Assembly Joint Resolution 7 on January 20, 1989. To procure speedy action, identical legislation is sometimes introduced in both houses of the Wisconsin legislature to allow both houses to work simultaneously on the same legislation. Following introduction in the Assembly, 1989 Assembly Joint Resolution 7 was referred to the Judiciary Committee. On January 26, 1989, the Judiciary Committee voted six-to-five to recommend adoption of the amendment. The Assembly version of the partial veto amendment was then referred to the Assembly Rules Committee. BULLETIN OF THE PROCEEDINGS OF THE WISCONSIN LEGISLATURE, 1989-90 Sess. 148 (Feb. 4, 1989).

According to T.J. Bolger, assistant to the Assembly Rules Committee chair, the partial veto amendment stalled in the Rules Committee because legislators wanted to divert more attention to a property tax referendum that appeared on the April 1989 ballot. Mr. Bolger expected that the partial veto amendment would come out of the Rules Committee when Democratic leaders felt that the time was right and when unpleasant memories of the defeat of the April 1989 referendum on property taxes had died away. Interview with T.J. Bolger, Administrative Assistant to Wisconsin Assembly Rules Committee Chair Tom Hauke, in Madison, Wisconsin (Apr. 6, 1989).

Some Democrats were surprised by the amendment's slow movement through the Assembly. Wisconsin Senate President Fred Risser speculated that Assembly leaders unilaterally decided to slow the progress of the amendment in the Assembly, in contravention of an earlier agreement between Senate and Assembly leaders to share timing decisions. Senator Risser believed that the Assembly leadership feared that an early partial veto referendum would turn into a referendum on Governor Thompson's popularity and might harm Democratic gubernatorial aspirations. Interview with Senator Fred Risser, Wisconsin State Senate, in Madison, Wisconsin (Apr. 4, 1989).

Placed on the Assembly calendar by the Rules Committee on October 24, 1989, the partial veto amendment passed the Assembly by a wide margin. See *supra* note 18.

243. Some Republicans, however, also believed that the governor enjoyed too much partial veto power. Radtke Interview, *supra* note 222.

244. Risser Interview, *supra* note 242.

245. Travis Interview, *supra* note 221. Senator Risser stated that although no one was really satisfied with the amendment, pragmatically, it was then the only one with a real chance of success. Risser Interview, *supra* note 242.

246. Representative Prosser believed that legislative action on the partial veto amendment failed to reflect a "long view." Prosser Interview, *supra* note 223.

On January 24, 1989, Representative Gregg Underheim offered Assembly Substitute

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Following *Wisconsin Senate* and the April 1990 partial veto amendment, four main restrictions applied to exercise of the Wisconsin partial veto. First, only appropriation bills are subject to the partial veto. Second, the appropriation bill text remaining after partial veto must constitute a complete, entire and workable law. Third, the resulting law must be germane to the subject of the partially vetoed appropriation bill. Fourth, single letter vetoes are prohibited. If these conditions are met, then the Wisconsin governor is free to alter broadly legislative appropriations and policy by employing the constitutional partial veto authority.

III. THE FUTURE: CONTAINMENT STRATEGIES

Other solutions less dramatic than amending the state constitution had been proposed to address the perceived imbalance of power created by *Wisconsin Senate*. Eventually, one or more of these proposed solutions may be implemented in conjunction with the constitutional amendment of the partial veto authority. Some legislative leaders advocate issuing the state budget in two parts, one part containing policy and one part containing appropriations.²⁴⁷ In fact, supporters of broad partial veto authority suggested a two-part budget to legislators unhappy with the post-*Wisconsin Senate* reach of the Wisconsin governor's partial veto pen.²⁴⁸

Issuing the budget in two parts would address some concerns about the extent of the partial veto authority. A two part budget would insulate policy initiatives and other substantive directives from the partial veto, thus reducing opportunities for "gubernatorial legislation." Issuing two budget documents would retain most advantages of centralized budget development and evaluation, recognized when omnibus budgets were first adopted in the early twentieth century.²⁴⁹

Conversely, splitting a single budget document into two budget documents would produce some fragmentation of the budget process. Rolling everything into one omnibus document has both political and practical advantages. The political advantages of an omnibus budget

On January 24, 1989, Representative Gregg Underheim offered Assembly Substitute Amendment I to the Assembly version of the partial veto amendment. Representative Underheim offered the amendment because he was concerned about the speedy, perhaps ill-considered progress of the partial veto amendment through the legislature. Telephone interview with Representative Gregg Underheim, Wisconsin State Assembly (Apr. 12, 1989). The Assembly Judiciary Committee met in executive session on January 25, 1989; committee members voted to reject Representative Underheim's substitute amendment and to recommend adoption of the partial veto amendment. Committee Record, Wisconsin Assembly partial veto amendment. Committee Record, Wisconsin Assembly Judiciary Committee (Jan. 25, 1989).

247. *Wisconsin Veto Flap*, Chapter 2, GOVERNING, Mar. 1988, at 38.

248. Chandler Interview, *supra* note 225; Prosser Interview, *supra* note 223.

249. See *supra* note 23 and accompanying text.

stem from the ability to include items fostering the building of a coalition large enough to secure passage of the budget.²⁵⁰ The coalition building that characterizes budget adoption also permits passage of substantive legislation that, although beneficial, might never pass otherwise.²⁵¹ Of course, an indistinct line distinguishes coalition building from logrolling; however, this very relationship argues for an effective but limited partial veto authority.

The practical advantages of an omnibus budget stem from the ability to construct a "big picture" scenario that includes both program initiatives and the funding to execute those initiatives. Many legislators believe that it is impossible to construct a budget without including policy items.²⁵² Other observers note that many people disagree on what constitutes "policy"²⁵³ or conclude that all budget decisions are policy decisions. An omnibus budget provides one way to enhance coordination of a complicated budget framework.

Senate President Fred Risser has proposed a second budget alternative: breaking the state budget into a number of smaller budget bills.²⁵⁴ Again, policy matters would be protected by isolating them in bills that did not contain appropriations.²⁵⁵ Many of the same considerations favoring and opposing a two bill budget also apply to Senator Risser's multi-bill budget proposal.

Nonetheless, increased fragmentation of state policy and programs wrought by numerous budget bills might create additional problems. Without an overall framework, enacted appropriations might conflict with related substantive law or other enacted appropriations. Small details might obscure major or crucial budget issues. Relying solely on their own momentum, essential but controversial appropriations might never muster enough support to secure passage. Finally, without the impending threat of "shutting down state government," major portions of the state budget might never be enacted.

Governor Thompson suggested a third alternative to amending the partial veto provisions of the state constitution. He proposed an informal agreement with the legislature whereby he would not veto

250. Although omnibus budget bills could appropriately be characterized as "Christmas trees," the Wisconsin state budget bill is the one bill the state legislature must pass. Concessions are sometimes necessary to secure the support required for passage. Risser Interview, *supra* note 242.

251. Representative Loftus cites Wisconsin's drunk driving law as legislation that never would have passed if not included in the omnibus budget bill. Loftus Address, *supra* note 239.

252. Risser Interview, *supra* note 239.

253. Chandler Interview, *supra* note 225.

254. The 1989 Legislature considered three separate budget bills: 1989 Senate Bill 31, the general executive budget bill; 1989 Senate Bill 32, the natural resources executive budget bill; and Senate Bill 33, the transportation executive budget bill.

255. Milwaukee Sentinel, June 15, 1988, at 1, col. 1.

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individual letters, in exchange for tacit permission to write in new, lower numbers to replace vetoed appropriations.²⁵⁶

Although the governor's proposal resembled the 1990 partial veto amendment, his proposal was somewhat more permissive. The main difference was that Governor Thompson proposed writing in totally new appropriation amounts, while the partial veto amendment limits governors to manipulating digits already present in an appropriation bill.²⁵⁷ Some cooperative spirit—missing from the budget drama leading to *Wisconsin Senate*—appeared to permeate Governor Thompson's proposed 1989 budget.²⁵⁸

The 1990 partial veto amendment, the suggested budget format revisions, and the governor's power sharing alternative address the most controversial vetoes challenged in *Wisconsin Senate*: vetoes which create new text by vetoing and recombining letters and words—vetoes which, in effect, permit the governor to legislate.²⁵⁹ None of these alternatives, however, fully addresses legitimate power balance issues intertwined with various political issues and partisan issues in the partial veto controversy.

Any formal or informal partial veto reform would have some effect on the ability or willingness of the current governor, and perhaps others, to execute partial vetoes. The proposed reforms would produce different effects on the balance of power between the Wisconsin legislature and the Wisconsin governor.

Splitting the current omnibus budget into two or more budget documents would remove from legislators some pressure to pass all necessary state appropriations. Splitting the budget would also remove the governor's leverage to check the budgetary behavior of the legislature by threatening to veto an entire budget. Ironically, perceived need for this type of leverage motivated adoption of the original Wisconsin partial veto amendment in 1930.²⁶⁰ A third result of splitting the budget would be complication of the immense task of coordinating

256. Milwaukee Sentinel, June 29, 1988, 2, col. 7.

257. It is unclear whether the governor still supports this alternative; his representatives advocate individual letter vetoes. Chandler Interview, *supra* note 225. Taffora Interview, *supra* note 224.

258. Senator Risser attributed the nature of the 1989 budget to Governor Thompson's upcoming 1990 reelection bid. Risser Interview, *supra* note 242.

The history of the partial veto amendment demonstrates potential pitfalls of understanding and communication. Before convening the special session at which the 1990 partial veto amendment received first approval, Democratic legislative leaders met with Governor Thompson's representatives to discuss partial veto amendment alternatives. At that time, the Governor's representatives allegedly agreed to an amendment prohibiting the veto of individual letters. The Governor and his representatives, however, eventually opposed the partial veto amendment. Theobald Interview, *supra* note 44; Risser Interview, *supra* note 242; Taffora Interview, *supra* note 224.

259. Travis Interview, *supra* note 221.

260. See *supra* notes 26-27 and accompanying text.

state spending, revenues, policy initiatives and ongoing programs. Effective further alteration of the partial veto power needs to address these concerns to ensure that Wisconsin residents have reasonable protection from special legislative interests, unbridled gubernatorial whims, or chaotic state government.

The compromise alternatives represented by the partial veto amendment and Governor Thompson's negotiation proposal come closer to allowing an integrated but balanced state budget process like that envisioned by earlier advocates of the partial veto and the omnibus budget. Governor Thompson's proposed solution would have depended on the voluntary cooperation of future governors. The small number of legislative votes necessary to sustain partial vetoes²⁶¹ means that the governor's solution provided no real check on gubernatorial power. His proposal, for that reason, was less desirable than the partial veto amendment.

Further, recent developments indicate that the relatively "quick fix" afforded by the 1990 partial veto amendment has not resolved the partial veto controversy. In March 1990, Wisconsin State Senator Fred Risser and Wisconsin State Representative David Travis filed a complaint in United States District Court for the Western District of Wisconsin, seeking declaratory and injunctive partial veto relief. The complaint names Governor Tommy Thompson both individually and in his official capacity, and alleges, among other causes of action, due process, equal protection and first amendment grounds. The complaint seeks to enjoin Governor Thompson and his successors from drafting and enacting any provision of law not passed or agreed to by the members of the Wisconsin Legislature.²⁶² Like the *Wisconsin Senate* litigation, the federal lawsuit probably represents an assortment of motives and reflects a variety of substantive concerns.

This Comment approves of the ratification of the 1990 partial veto amendment to the Wisconsin Constitution. The 1990 amendment is a step in the right direction. The 1990 amendment allows the legislature to retain some control over the policy content of omnibus appropriation bills, yet permits the governor to control special interest appropriations.

Further, this Comment also advocates adoption of a second amendment that would further restrict partial veto of Wisconsin appropriation bills. The policy consequences of vetoing single words, especially "not," are potentially as severe as vetoing single letters.²⁶³ Because the present scope of Wisconsin partial veto authority continues to raise genuine separation of powers issues as evidenced by the recently

261. See *supra* note 9.

262. Complaint for Declaratory and Injunctive Relief, *Risser v. Thompson*, No. 90-C-02155 (W.D. Wis. filed Mar. 26, 1990).

263. Prosser Interview, *supra* note 223.

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filed federal lawsuit, legislative attention to the partial veto controversy should not cease with passage and ratification of the 1990 constitutional amendment, prohibiting only single letter partial vetoes. The ability of federal courts to provide an effective partial veto resolution may be limited by the nature of available remedies. Instead, careful legislative consideration, with meaningful opportunities for public participation, should provide clear and workable additional limits on the Wisconsin partial veto authority.

The partial veto controversy continues to present difficult, complicated issues. Effectively resolving the controversy will require thoughtful examination and, eventually, policy decisions accompanied by legislative commitment. Further, effective reform requires looking forward, not backward. State legislatures in general, and the Wisconsin legislature in particular, are different institutions in 1990 than they were in 1930. Career legislators, supported by greatly expanded technical support staffs, now work year-round with larger, more complicated state functions and budgets.²⁶⁴ Clear vision and analysis, departing perhaps from the letter but not the spirit of earlier days, is required to structure an appropriate partial veto authority for the 1990s and beyond.

The heart of the Wisconsin partial veto controversy consists of defining limits. To give Wisconsin governors reasonable veto authority, yet prevent abuses wrought by overreaching, legislators and the governor might reach a workable compromise in a further partial veto amendment by prohibiting veto of grammatical units smaller than sentences and permitting veto of digits only from appropriation amounts. "Boondoggles" would remain subject to the governor's veto pen, but the most creative and objectionable partial vetoes executed by Governor Thompson in 1988 would be prohibited.

IV. CONCLUSION

An imbalance of power between the executive and legislative branches of Wisconsin state government continues to characterize its budget process. The imbalance derives mainly from judicial interpretations of Wisconsin's historically broad partial veto authority. According to those interpretations, a Wisconsin governor may veto digits, numbers, punctuation and words contained in appropriation bills.

264. Rosenthal, *supra* note 229. Partial veto or item veto controversies have recently flared in numerous states in addition to Wisconsin. See Pottoroff, *Political Stew: Item Veto Issues Bubbling to the Top in State Court Jurisdictions*, 1 EMERGING ISSUES IN ST. CONST. 1121 (1988). Of course, analysts have long debated whether the United States President should be conferred with some type of partial veto authority. For arguments on both sides of the national issue, see *Symposium on the Line-Item Veto*, 1 NOTRE DAME J. L. ETHICS & PUB. POL. (1985).

Wisconsin's current constitutional check on its governor's partial veto authority is veto override by two-thirds of each house of the state legislature. For political reasons, override attempts often fail. As few as twelve state senators can prevent a veto override. Consequently, Wisconsin's budgetary separation of powers balance is skewed toward the governor. Partisan and political issues also complicate the state budget process. Action is required to restore the balance to what was intended by the constitutional framers, to what is desired by state citizens, and to what is healthy for state government.

Therefore, this Comment advocates further study and discussion of the separation of powers issues raised by the current broad partial veto authority. This Comment also recommends appropriate further amendment of the partial veto provisions of the Wisconsin constitution.

MARY E. BURKE

